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Ministerial Code: Remit for Independent Adviser

Background

It has been alleged that the First Minister breached the Scottish Ministerial Code in that she failed to feed back the basic facts of meetings and discussions held with Alex Salmond to her private office as required by sections 4.22 and 4.23 of the Code. The meetings and discussions in question took place on:

- 2 April 2018 - Meeting between Ms Sturgeon and Mr Salmond at Ms Sturgeon's home.
- 23 April 2018 - Telephone conversation between Ms Sturgeon and Mr Salmond.
- 7 June 2018 - Meeting between Ms Sturgeon and Mr Salmond at SNP Conference, Aberdeen.
- 14 July 2018 - Meeting between Ms Sturgeon and Mr Salmond at Ms Sturgeon's home.
- 18 July 2018 - Telephone conversation between Ms Sturgeon and Mr Salmond.

It has been further suggested that, in light of those meetings, the First Minister may have attempted to influence the conduct of the investigation then being undertaken by the Permanent Secretary into allegations made against Mr Salmond under the Procedure for Handling of Harassment Complaints involving Current or Former Ministers ("the Procedure").

Scottish Ministerial Code

The key relevant extracts from the Code are:

1.6. Ministers are personally responsible for deciding how to act and conduct themselves in the light of the Ministerial Code and for justifying their actions to Parliament and the public. The First Minister is, however, the ultimate judge of the standards of behaviour expected of a Minister and of the appropriate consequences of a breach of those standards. Although the First Minister will not expect to comment on every matter which could conceivably be brought to his or her attention, Ministers can only remain in office for so long as they retain the First Minister's confidence.

1.7. Where he or she deems it appropriate, the First Minister may refer matters to the independent advisers on the Ministerial Code to provide him or her with advice on which to base his or her judgement about any action required in respect of Ministerial conduct. The findings of the independent advisers will be published.

Contacts with External Individuals and Organisations, including Outside Interest Groups and Lobbyists

4.22 Ministers meet many people and organisations and consider a wide range of views as part of the formulation of Government policy. Meetings on

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official business should normally be arranged through Private Offices. A private secretary or official should be present for all discussions relating to Government business. Private Offices should arrange for the basic facts of formal meetings between Ministers and outside interest groups to be recorded, setting out the reasons for the meeting, the names of those attending and the interests represented. A monthly list of engagements carried out by all Ministers is published three months in arrears.

4.23 If Ministers meet external organisations or individuals and find themselves discussing official business without an official present – for example at a party conference, social occasion or on holiday – any significant content (such as substantive issues relating to Government decisions or contracts) should be passed back to their Private Offices as soon as possible after the event, who should arrange for the basic facts of such meetings to be recorded in accordance with paragraph 4.22 above.

The First Minister has, accordingly, referred the matter for consideration by one or both Independent Advisers for advice on which to base her judgement about any action required in accordance with the Code.

Remit

The remit for the referral is to:

1. Review any relevant documentation relating to the meetings and discussions listed above.
2. Interview any Minister or official of the Scottish Government, including Special Advisers, who may have any knowledge of the facts and content of the meetings and discussions, to assess whether the Ministerial Code is engaged and, if so, whether the terms of the Code have been complied with.
3. Interview any relevant person outwith the Scottish Government, including the former First Minister, Alex Salmond, who may have information relating to the facts and content of the meetings and discussions.
4. Determine if there is any evidence that the First Minister attempted to use information discussed during those meetings and discussions to influence the conduct of the investigation being undertaken by the Permanent Secretary into allegations made against Mr Salmond under the Procedure.
5. Provide the First Minister with a report setting out the findings and conclusions with regard to:
 - i. whether the Ministerial Code is engaged regarding the meetings and discussions;
 - ii. whether there has been any breach of the Code and the nature of any such breach; and
 - iii. if a breach has occurred, advice on the appropriate remedy or sanction.
6. The Independent Adviser is further invited to consider and offer views on whether the Ministerial Code might need revision to reflect the terms of the Procedure and the strict limitations it places on the involvement of the First Minister in cases which fall to be considered under the Procedure.

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Timing

The Independent Adviser is invited to commence the investigation and submit a report as soon as possible.

Publication

The terms of this remit and appointment letter will be published.

The final report will be published. If required in order to avoid any risk of impacting on, or prejudicing, the police investigations or any criminal proceedings, a report may be published with any redactions thought necessary by the Independent Advisers. If redactions are required for legal reasons, a full, un-redacted version of the report will be published following the conclusion of any criminal proceedings, including any appeal, reflecting any legal reporting restrictions that are applied.

Payment

Appointment as an Independent Adviser does not attract payment. Reasonable travel and subsistence costs will be paid in line with normal Civil Service rules.

Secretariat

The Scottish Government will provide secretariat support as required.

Scottish Government
January 2019

File Note

James Hamilton, Independent Adviser on the Scottish Ministerial Code

1. This note records a telephone discussion I had today with Mr Hamilton.
2. In anticipation of a possible referral by the First Minister under the Code, I called Mr Hamilton in order to establish: 1) his availability to undertake a referral, if that was the First Minister's preferred course of action; and 2) to establish if he thought there would be any reason why he would be prevented from accepting a referral.
3. Mr Hamilton was aware in general terms of recent events involving the First Minister and Mr Salmond from media reports. He indicated that he would have availability to accept a referral if required. He could not immediately see any reason or conflict that would prevent him from being able to act. He was, though, alive to the fact that there was a continuing police investigation and said that, before agreeing to be appointed, he would want to reflect on the scope of the remit of the referral to assure himself that it would be possible to avoid any difficulties arising from having the two processes happening concurrently.
4. Mr Hamilton told me that his contact with Mr Salmond had been limited to a couple of phone calls around the time of his appointment in 2013. They have had no contact since then. Mr Hamilton has not had any contact with Ms Sturgeon, beyond being reappointed by her as an independent adviser on the Code in July 2015. Mr Hamilton has not had any cases referred to him under the Scottish Ministerial Code.
5. I told Mr Hamilton that I expected the First Minister would come to a view about the need for a referral in the next few days and that I would advise him about the decision that was reached.

James Hynd
11 January 2019

IN CONFIDENCE: Scottish Ministerial Code: Referral to Independent Advisers

From: [REDACTED]
To: [REDACTED] [REDACTED]@[REDACTED]
Cc: Hynd JS (James) <james.hynd@gov.scot>
Date: Sun, 13 Jan 2019 13:17:11 +0000

The Rt Hon Dame Elish Angiolini DBE QC
James Hamilton

Copy to : James Hynd, Head of Cabinet Secretariat, Scottish Government

Dame Elish,
James,

I am writing to you on behalf of my colleague, James Hynd, Head of Cabinet Secretariat in the Scottish Government, to alert you to the fact that the First Minister, Rt Hon Nicola Sturgeon MSP, has decided to make a referral to the independent advisers on the Ministerial Code.

I am sending you (in box below) the text of the First Minister's planned statement, which she is due to issue early this afternoon.

The proposed remit for the referral is still being finalised, but it will be sent to you as soon as possible.

James will be in touch tomorrow (Monday) to discuss your potential availability. I understand that he has already spoken briefly to James Hamilton.

Please do not hesitate to contact James Hynd or myself if we can be of any assistance in the meantime.

With kind regards,

[REDACTED] [REDACTED]

Ministerial Code: Referral to Independent Advisers

First Minister Nicola Sturgeon has today confirmed that she will make a referral to the panel of independent advisers on the Ministerial Code.

Confirming the referral, the First Minister said:

"It is in the interests of the women who have complained that the ongoing police investigations are allowed to continue without any risk of prejudice. That must be the priority for everyone.

"Questions have been raised about my meetings and telephone calls with Alex Salmond during the Government's investigation into the complaints which were made.

“The fact remains that at the centre of this issue are two women whose complaints could not be swept under the carpet. Any continuing commentary about these issues at this stage – whether from myself, the Government or Mr Salmond and his representatives – would only serve to distract from and potentially compromise the proper consideration by the police of the subject matter of their investigations. That is something we will not do.”

[REDACTED] [REDACTED] | Cabinet Secretariat | Scottish Government | T [REDACTED]
[REDACTED] | Room 4N.02, St Andrew's House, 1 Regent Road, Edinburgh EH1 3DG



St Andrew's House, Regent Road, Edinburgh EH1 3DG

T: [REDACTED]

13th January 2019.

Dear Pauline,

Re your email of 9th January.

Today I confirmed that I will make a referral to the panel of independent advisers on the Ministerial Code.

It is in the interests of the women who have complained that the ongoing police investigations are allowed to continue without any risk of prejudice. That must be the priority for everyone.

Questions have been raised about my meetings and telephone calls with Alex Salmond during the Government's investigation into the complaints which were made.

I have acted appropriately and in good faith throughout, and in compliance with the Ministerial Code at all times. However, I have reflected carefully and understand that it is also important for Parliament and the wider public to be assured of that.

I have therefore decided to refer the matter for consideration by one or both of the Independent Advisers on the Ministerial Code.

The Independent Advisers will now be consulted on their precise remit, and advice will also be sought on how to ensure that there is no risk of prejudice to the ongoing police investigation. The remit will be published in due course.

The fact remains that at the centre of this issue are two women whose complaints could not be swept under the carpet. Any continuing commentary about these issues at this stage – whether from myself, the Government or Mr Salmond and his representatives – would only serve to distract from and potentially compromise the proper consideration by the police of the subject matter of their investigations. That is something we will not do.

I have also sent a copy of this letter to Richard Leonard, MSP

[REDACTED]

Nicola Sturgeon



St Andrew's House, Regent Road, Edinburgh EH1 3DG

T: [REDACTED]

13th January 2019.

Dear Richard,

Re your letter of 10th January.

Today I confirmed that I will make a referral to the panel of independent advisers on the Ministerial Code.

It is in the interests of the women who have complained that the ongoing police investigations are allowed to continue without any risk of prejudice. That must be the priority for everyone.

Questions have been raised about my meetings and telephone calls with Alex Salmond during the Government's investigation into the complaints which were made.

I have acted appropriately and in good faith throughout, and in compliance with the Ministerial Code at all times. However, I have reflected carefully and understand that it is also important for Parliament and the wider public to be assured of that.

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I have also sent a copy of this letter to Pauline McNeill, MSP.

[REDACTED]

Nicola Sturgeon

Fw: Ministerial Code: Referral to an Independent Adviser

From: Hynd JS (James) <james.hynd@gov.scot>
To: [REDACTED]@gov.scot>
Date: Sun, 13 Jan 2019 12:42:38 +0000
Attachments: Referral final FM.docx (8.44 kB); image002.png (32.27 kB)

[REDACTED]

As discussed, here is the text of FM's statement .

Can you please now issue to both IAs letting them know the timing of when it will be released. Could you also ask Dame Elish when it might be convenient for me to speak to her. I already know Mr Hamilton's availability.

We don't yet have the remit to share with them. I am chasing that now.

We had better have a chat tomorrow about how we will support all that needs to be done.

Many thanks for your help.

James

Sent from my BlackBerry 10 smartphone.

From: First Minister <firstminister@gov.scot>
Sent: Sunday, 13 January 2019 12:31
To: First Minister; Cackette PH (Paul); Hynd JS (James)
Cc: Lord Advocate; Permanent Secretary; Evans L (Leslie); [REDACTED]; [REDACTED]; McAllister C (Colin); Nicolson S (Stuart) Special Adviser; Troup C (Colin) (Dr)
Subject: Ministerial Code: Referral to an Independent Adviser

James,

As discussed – the First Minister has confirmed that that she will make a referral to the panel of independent advisers on the Ministerial Code.

I've attached a the final statement which we will issue shortly after the 1pm update call.

[REDACTED]

[REDACTED]



All e-mails and attachments sent by a Ministerial Private Office to any other official on behalf of a Minister relating to a decision, request or comment made by a Minister, or a note of a Ministerial meeting, must be filed appropriately by the recipient. Private Offices do not keep official records of such e-mails or attachments. Scottish Ministers, Special advisers and the Permanent Secretary are covered by the terms of the Lobbying (Scotland) Act 2016. See www.lobbying.scot

Ministerial Code: Referral to Independent Advisers

First Minister Nicola Sturgeon has today confirmed that she will make a referral to the panel of independent advisers on the Ministerial Code.

Confirming the referral, the First Minister said:

“It is in the interests of the women who have complained that the ongoing police investigations are allowed to continue without any risk of prejudice. That must be the priority for everyone.

“Questions have been raised about my meetings and telephone calls with Alex Salmond during the Government’s investigation into the complaints which were made.

“I have acted appropriately and in good faith throughout, and in compliance with the Ministerial Code at all times. However, I have reflected carefully and understand that it is also important for Parliament and the wider public to be assured of that.

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File Note

Dame Elish Angiolini, Independent Adviser on the Scottish Ministerial Code

1. This note records a telephone discussion I had today with Dame Elish.
2. We had yesterday sent Dame Elish a copy of the First Minister's statement that she would be referring herself to the Independent Advisers. Dame Elish has therefore had the opportunity to consider the matter. She advised me that she has been engaged by the Scottish Government to conduct a review into, 'Complaints Handling, Investigations, and Misconduct Issues in relation to Policing in Scotland'. This is a remunerated appointment. The review commenced in Autumn 2018 and may take between 18 months to two years to complete.
3. On the grounds that she has agreed to undertake this remunerated role on behalf of Scottish Ministers, Dame Elish has concluded that it would be inappropriate for her to simultaneously undertake a referral in relation to the alleged breach of the Ministerial Code.

James Hynd
14 January 2019

RE: IN CONFIDENCE: Scottish Ministerial Code: Referral to Independent Advisers

From: Hynd JS (James) <james.hynd@gov.scot>
To: [REDACTED] [REDACTED]@gov.scot>, Elish Angiolini [REDACTED]
Date: Mon, 14 Jan 2019 09:30:02 +0000

Dear Dame Elish

Would a call at 11:00am this morning would convenient for you?

James
James Hynd
Head of Cabinet, Parliament and Governance Division
Scottish Government
[REDACTED]

From: [REDACTED] [REDACTED]@gov.scot>
Sent: 14 January 2019 08:31
To: Elish Angiolini [REDACTED]
Cc: Hynd JS (James) <James.Hynd@gov.scot>
Subject: Re: IN CONFIDENCE: Scottish Ministerial Code: Referral to Independent Advisers

Dame Elish,

Thank you for your message, which I am passing on to James Hynd.

James intends to call you this morning.

Best wishes,

[REDACTED]

Sent from my BlackBerry 10 smartphone.

From: Elish Angiolini
Sent: Monday, 14 January 2019 08:17
To: [REDACTED]
Subject: Re: IN CONFIDENCE: Scottish Ministerial Code: Referral to Independent Advisers

Dear [REDACTED]

I would appreciate a call this morning, if possible.

I think the timing of the investigation could be sensitive given the on going police investigation. You may wish to consult [REDACTED]

[REDACTED]

It would be important that the Ministerial Code investigation did not have the potential to disrupt police investigations.

Best wishes,

Elish Angiolini

On Sunday, 13 January 2019, Elish Angiolini [REDACTED] wrote:

Dear [REDACTED]

Noted. My mobile number has changed. It is [REDACTED]

As you will be aware, I am currently carrying out an independent review of complaints against the police in Scotland at the instance of the Cabinet Secretary for Justice and the Lord Advocate.

You may wish to discuss with me whether that creates any perception of conflict while the review is ongoing. It may be preferable to ask Mr Hamilton to carry this out or to appoint an additional independent advisor? There were originally three of us to cover such situations.

Best wishes,

Elish Angiolini

On Sunday, 13 January 2019, <[REDACTED].[REDACTED]@gov.scot> wrote:

The Rt Hon Dame Elish Angiolini DBE QC
James Hamilton

Copy to : James Hynd, Head of Cabinet Secretariat, Scottish Government

Dame Elish,
James,

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With kind regards,



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"Questions have been raised about my meetings and telephone calls with Alex Salmond during the Government's investigation into the complaints which were made.

"I have acted appropriately and in good faith throughout, and in compliance with the Ministerial Code at all times. However, I have reflected carefully and understand that it is also important for Parliament and the wider public to be assured of that.

"I have therefore decided to refer the matter for consideration by one or both of the Independent Advisers on the Ministerial Code.

"The Independent Advisers will now be consulted on their precise remit, and advice will also be sought on how to ensure that there is no risk of prejudice to the ongoing police investigation. The remit will be published in due course.

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Tha am post-d seo (agus faidhle neo ceanglan còmhla ris) dhan neach neo luchd-ainmichte a-mhàin. Chan eil e ceadaichte a chleachdadh ann an dòigh sam bith, a' toirt a-steach còraichean, foillseachadh neo sgaoileadh, gun chead. Ma 's e is gun d'fhuair sibh seo gun fhiosd', bu choir cur às dhan phost-d agus lethbhreac sam bith air an t-siostam agaibh agus fios a leigeil chun neach a sgaoil am post-d gun dàil. Dh'fhaodadh gum bi teachdaireachd sam bith bho Riaghaltas na h-Alba air a chlàradh neo air a sgrùdadh airson dearbhadh gu bheil an siostam ag obair gu h-èifeachdach neo airson adhbhar laghail eile. Dh'fhaodadh nach eil beachdan anns a' phost-d seo co-ionann ri beachdan Riaghaltas na h-Alba.

**

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From: Hynd JS (James) <James.Hynd@gov.scot>
Sent: 15 January 2019 18:37
To: [REDACTED] <[REDACTED]@gov.scot>
Subject: FW: Ministerial Code and SG inquiry

[REDACTED]

Can we place in the folder please. Thanks

James

James Hynd
Head of Cabinet, Parliament and Governance Division
Room 4N:03
St Andrew's House
Edinburgh
Internal ext [REDACTED]
[REDACTED]

From: Lloyd E (Elizabeth) <Elizabeth.Lloyd@gov.scot>
Sent: 15 January 2019 16:51
To: Permanent Secretary <PermanentSecretary@gov.scot>; First Minister <firstminister@gov.scot>; Hynd JS (James) <James.Hynd@gov.scot>; Ellis T (Tim) <Tim.Ellis@gov.scot>; [REDACTED] <[REDACTED]@gov.scot>; Davidson S (Sarah) <Sarah.Davidson@gov.scot>; Deputy First Minister and Cabinet Secretary for Education and Skills <DFMCSE@gov.scot>
Cc: McAllister C (Colin) <Colin.McAllister@gov.scot>; Nicolson S (Stuart) Special Adviser <Stuart.Nicolson@gov.scot>; [REDACTED] <[REDACTED]@gov.scot>; Easton A (Aileen) <Aileen.Easton@gov.scot>
Subject: Ministerial Code and SG inquiry

In line with the First Minister's decision to transfer ministerial responsibility for decision making in relation to the internal review to the DFM, it is my view that I should not be party to consideration of the internal review or the ministerial code inquiry.

I am happy to take advice on my involvement in any other aspect being considered by the government and to continue to be consulted on any media queries or parliamentary queries relating to me as is judged appropriate or necessary.

The First Minister and Deputy First Minister are content with Colin McAllister or Stuart Nicolson representing their interests in these matters as required.

Regards

Liz

Elizabeth Lloyd
Chief of Staff to the First Minister

St Andrew's House

Regent Road

Edinburgh EH1 3DG

Tel: [REDACTED]

Mobile: [REDACTED]

Elizabeth.Lloyd@gov.scot

Please note Scottish Ministers, Special advisers and the Permanent Secretary to the Scottish Government are covered by the terms of the Lobbying (Scotland) Act 2016. See www.lobbying.scot for information.

Meeting Note

Scottish Ministerial Code Referral

1. This note records a meeting held today with the First Minister to discuss the next steps following her decision to refer herself to the Independent Advisers under the Code. Also present were the Lord Advocate, Paul Cackette, John Somers, Chris Birt and myself.
2. I reported to the First Minister my recent discussions with the Independent Advisers, James Hamilton and Dame Elish Angiolini. Mr Hamilton had indicated that he would be available to undertake the referral, if required, and was not aware of any conflict of interest that would prevent him doing so. He was, however, concerned about the fact of the ongoing police investigation into Mr Salmond and the risk to that process that might arise from undertaking a concurrent review under the Code. On that basis, he said that his agreement to accepting the referral would be conditional on seeing and agreeing the remit for the referral so as to ensure himself that it would be possible to avoid any prejudice to the police investigation.
3. Dame Elish advised me that she had been engaged by the Scottish Government to conduct a review into, 'Complaints Handling, Investigations, and Misconduct Issues in relation to Policing in Scotland'. This is a remunerated appointment. The review commenced in Autumn 2018 and may take between 18 months and two years to complete. On the grounds that she has agreed to undertake this remunerated role on behalf of Scottish Ministers, Dame Elish had concluded that it would be inappropriate for her to simultaneously undertake a referral in relation to the alleged breach of the Ministerial Code. She therefore recused herself from acting as an Independent Adviser on this occasion.
4. As Mr Hamilton has identified, setting the remit for the review would be critical. On the one hand, setting a narrow remit, in order to minimise the risks to the police investigation, or possible trial, might unduly restrict the scope of the Independent Adviser to fully determine compliance with the Code. On the other hand, a wide remit would increase the risk of potential prejudice and might not, therefore, be acceptable to Mr Hamilton.
5. The meeting also discussed the importance of the remit looking beyond the narrow allegation that there had been a breach of the Code with regard to recording the meetings and discussions. In order to provide assurance to Parliament and the wider public, the remit should also extend to whether there is any evidence that the First Minister sought to influence the Permanent Secretary in terms of the conduct of the investigation under the Procedure. The First Minister was clear that she had made no such attempts, but in the interests of openness the Independent Adviser should be free to pursue this point as considered necessary.
6. It was also noted that there appeared to be an incongruity between the obligations in sections 4.22 and 4.23 of the Code and the operation of the new Procedure for Handling of Harassment Complaints involving Current or Former Ministers ("the Procedure"). The intention behind those sections of the Code is to

ensure public transparency with regard to Ministerial meetings. However, the Procedure is designed to protect the confidentiality of those involved and to maintain a separation between officials and the First Minister during the investigation stage. It seemed paradoxical that it was being suggested that the First Minister should have been required to place details of these particular meetings in the public domain during the course of a confidential investigation. This apparent contradiction might usefully be considered by the Independent Adviser with a view to considering if the Code needs to be updated to reflect the new Procedure in order to provide greater clarity for any future such issues.

7. The First Minister asked that, in the first instance, I develop the draft remit to reflect the above discussion and to then seek advice from the Crown Agent about his views of the risks that such a remit might have for the police investigation or any future criminal proceedings. Following that, Mr Hamilton's views will also need to be sought. While keen for the referral to be completed in good time, the First Minister's priority is to ensure that nothing related to the Ministerial Code referral interferes with, or prejudices, the criminal investigation or any future trial, and will act on the advice she receives in that regard.

James Hynd
Cabinet Secretariat
15 January 2019

Ministerial Code: Remit for Independent Adviser

Background

It has been alleged that the First Minister breached the Scottish Ministerial Code in that she failed to feed back the basic facts of meetings and discussions held with Alex Salmond to her private office as required by sections 4.22 and 4.23 of the Code. The meetings and discussions in question took place on:

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4. Determine if there is any evidence that the First Minister attempted to use information discussed during those meetings and discussions to influence the conduct of the investigation being undertaken by the Permanent Secretary into allegations made against Mr Salmond under the Procedure.
5. Provide the First Minister with a report setting out the findings and conclusions with regard to:
 - i. whether the Ministerial Code is engaged regarding the meetings and discussions;
 - ii. whether there has been any breach of the Code and the nature of any such breach; and
 - iii. if a breach has occurred, advice on the appropriate remedy or sanction.
6. The Independent Adviser is further invited to consider and offer views on whether the Ministerial Code might need revision to reflect the terms of the Procedure and the strict limitations it places on the involvement of the First Minister in cases which fall to be considered under the Procedure.

Timing

The Independent Adviser is invited to commence the investigation and submit a report as soon as possible.

Publication

The terms of this remit and appointment letter will be published.

The final report will be published. If required in order to avoid any risk of impacting on, or prejudicing, the police investigations or any criminal proceedings, a report may be published with any redactions thought necessary by the Independent Advisers. If redactions are required for legal reasons, a full, un-redacted version of the report will be published following the conclusion of any criminal proceedings, including any appeal, reflecting any legal reporting restrictions that are applied.

Payment

Appointment as an Independent Adviser does not attract payment. Reasonable travel and subsistence costs will be paid in line with normal Civil Service rules.

Secretariat

The Scottish Government will provide secretariat support as required.

Scottish Government
January 2019



David Harvie
Crown Agent
Crown Office
25 Chambers Street
Edinburgh
EH1 1 LA

17 January 2019

Dear David

SCOTTISH MINISTERIAL CODE

As you will be aware, the First Minister has announced her intention to refer herself to the Independent Advisers on the Scottish Ministerial Code. This is in respect of allegations that there has been a breach of the Code in relation to meetings and discussions that the First Minister had last year with the former First Minister, Rt Hon Alex Salmond.

In her statement on 13 January, the First Minister said that “the Independent Advisers will now be consulted on their precise remit, and advice will also be sought on how to ensure that there is no risk of prejudice to the ongoing police investigation”.

We have now developed a near-final draft remit, which is attached. As noted by the First Minister, it will be essential to ensure that there is nothing in the proposed remit that might give rise to any risk to the conduct of the police investigation and any subsequent criminal trial.

In that regard, it would be very helpful to have your advice on whether it might risk prejudicing, or impacting on in some other way, the police investigation (and any possible criminal proceedings) if the Independent Advisers were to proceed, in parallel, with an investigation in the terms set out in the attached remit.

Yours Sincerely

James Hynd



From: Hynd JS (James) <James.Hynd@gov.scot>
Sent: 23 January 2019 10:02
To: [REDACTED] <[REDACTED]@gov.scot>
Subject: FW: Ministerial Code Referral

[REDACTED]

Can this be placed into the eRDM folder please.

James

James Hynd
Head of Cabinet, Parliament and Governance Division
Room 4N:03
St Andrew's House
Edinburgh
Internal ext [REDACTED]
[REDACTED]

From: Hynd JS (James)
Sent: 23 January 2019 10:01
To: 'James Hamilton' <[REDACTED]>
Subject: Ministerial Code Referral

Dear Mr Hamilton

As discussed, please find attached a letter concerning the referral under the Ministerial Code. Also attached is a copy of the near-final remit for the referral, along with the text of the First Minister's statement announcing her decision to self-refer herself to the Independent Advisers.

I look forward to receiving your views on this material.

With best wishes

James

James Hynd
Head of Cabinet, Parliament and Governance Division
Scottish Government
Room 4N:03
St Andrew's House

Edinburgh
Internal ext [REDACTED]
[REDACTED]

Ministerial Code: Referral to Independent Advisers

First Minister Nicola Sturgeon has today confirmed that she will make a referral to the panel of independent advisers on the Ministerial Code.

Confirming the referral, the First Minister said:

“It is in the interests of the women who have complained that the ongoing police investigations are allowed to continue without any risk of prejudice. That must be the priority for everyone.

“Questions have been raised about my meetings and telephone calls with Alex Salmond during the Government’s investigation into the complaints which were made.

“I have acted appropriately and in good faith throughout, and in compliance with the Ministerial Code at all times. However, I have reflected carefully and understand that it is also important for Parliament and the wider public to be assured of that.

“I have therefore decided to refer the matter for consideration by one or both of the Independent Advisers on the Ministerial Code.

“The Independent Advisers will now be consulted on their precise remit, and advice will also be sought on how to ensure that there is no risk of prejudice to the ongoing police investigation. The remit will be published in due course.

“The fact remains that at the centre of this issue are two women whose complaints could not be swept under the carpet. Any continuing commentary about these issues at this stage – whether from myself, the Government or Mr Salmond and his representatives – would only serve to distract from and potentially compromise the proper consideration by the police of the subject matter of their investigations. That is something we will not do.”

T: [REDACTED]
E: james.hynd@gov.scot

I
[REDACTED]

23 January 2019

Dear Mr Hamilton

SCOTTISH MINISTERIAL CODE: REFERRAL

I am writing to you in connection with the First Minister's decision to refer herself to the Independent Advisers on the Ministerial Code. I re-attach a copy of the First Minister's statement to that effect.

As set out in her statement, the First Minister indicated that advice would be sought from the Independent Advisers on the terms of the remit. At the same time, she also noted that advice would be sought on how to ensure that there would be no risk of prejudice to the ongoing police investigation. We are still in the process of seeking advice on that latter point from the appropriate authorities.

Subject to the receipt of that advice, I am passing to you the current draft remit for your consideration at this time. We may, of course, need to adjust the remit to reflect the advice noted above, as well as taking into account your own views.

As I think you will also be aware, Dame Elish Angiolini has recused herself from involvement in this referral as she is already undertaking a policy review on behalf of Scottish Ministers.

Please let me know if it would be helpful to discuss the draft remit, or any other aspect of the referral.

Yours Sincerely

James Hynd

T: [REDACTED]
E: james.hynd@gov.scot

I
[REDACTED]

23 January 2019

Dear Mr Hamilton

SCOTTISH MINISTERIAL CODE: REFERRAL

I am writing to you in connection with the First Minister's decision to refer herself to the Independent Advisers on the Ministerial Code. I re-attach a copy of the First Minister's statement to that effect.

As set out in her statement, the First Minister indicated that advice would be sought from the Independent Advisers on the terms of the remit. At the same time, she also noted that advice would be sought on how to ensure that there would be no risk of prejudice to the ongoing police investigation. We are still in the process of seeking advice on that latter point from the appropriate authorities.

Subject to the receipt of that advice, I am passing to you the current draft remit for your consideration at this time. We may, of course, need to adjust the remit to reflect the advice noted above, as well as taking into account your own views.

As I think you will also be aware, Dame Elish Angiolini has recused herself from involvement in this referral as she is already undertaking a policy review on behalf of Scottish Ministers.

Please let me know if it would be helpful to discuss the draft remit, or any other aspect of the referral.

Yours Sincerely

James Hynd

Ministerial Code: Remit for Independent Adviser

Background

It has been alleged that the First Minister breached the Scottish Ministerial Code in that she failed to feed back the basic facts of meetings and discussions held with Alex Salmond to her private office as required by sections 4.22 and 4.23 of the Code. The meetings and discussions in question took place on:

- 2 April 2018 - Meeting between Ms Sturgeon and Mr Salmond at Ms Sturgeon's home.
- 23 April 2018 - Telephone conversation between Ms Sturgeon and Mr Salmond.
- 7 June 2018 - Meeting between Ms Sturgeon and Mr Salmond at SNP Conference, Aberdeen.
- 14 July 2018 - Meeting between Ms Sturgeon and Mr Salmond at Ms Sturgeon's home.
- 18 July 2018 - Telephone conversation between Ms Sturgeon and Mr Salmond.

It has been further suggested that, in light of those meetings, the First Minister may have attempted to influence the conduct of the investigation then being undertaken by the Permanent Secretary into allegations made against Mr Salmond under the Procedure for Handling of Harassment Complaints involving Current or Former Ministers ("the Procedure").

Scottish Ministerial Code

The key relevant extracts from the Code are:

1.6. Ministers are personally responsible for deciding how to act and conduct themselves in the light of the Ministerial Code and for justifying their actions to Parliament and the public. The First Minister is, however, the ultimate judge of the standards of behaviour expected of a Minister and of the appropriate consequences of a breach of those standards. Although the First Minister will not expect to comment on every matter which could conceivably be brought to his or her attention, Ministers can only remain in office for so long as they retain the First Minister's confidence.

1.7. Where he or she deems it appropriate, the First Minister may refer matters to the independent advisers on the Ministerial Code to provide him or her with advice on which to base his or her judgement about any action required in respect of Ministerial conduct. The findings of the independent advisers will be published.

Contacts with External Individuals and Organisations, including Outside Interest Groups and Lobbyists

4.22 Ministers meet many people and organisations and consider a wide range of views as part of the formulation of Government policy. Meetings on official business should normally be arranged through Private Offices. A private secretary or official should be present for all

discussions relating to Government business. Private Offices should arrange for the basic facts of formal meetings between Ministers and outside interest groups to be recorded, setting out the reasons for the meeting, the names of those attending and the interests represented. A monthly list of engagements carried out by all Ministers is published three months in arrears.

4.23 If Ministers meet external organisations or individuals and find themselves discussing official business without an official present – for example at a party conference, social occasion or on holiday – any significant content (such as substantive issues relating to Government decisions or contracts) should be passed back to their Private Offices as soon as possible after the event, who should arrange for the basic facts of such meetings to be recorded in accordance with paragraph 4.22 above.

The First Minister has, accordingly, referred the matter for consideration by one or both Independent Advisers for advice on which to base her judgement about any action required in accordance with the Code.

Remit

The remit for the referral is to:

1. Review any relevant documentation relating to the meetings and discussions listed above.
2. Interview any Minister or official of the Scottish Government, including Special Advisers, who may have any knowledge of the facts and content of the meetings and discussions, to assess whether the Ministerial Code is engaged and, if so, whether the terms of the Code have been complied with.
3. Interview any relevant person outwith the Scottish Government, including the former First Minister, Alex Salmond, who may have information relating to the facts and content of the meetings and discussions.
4. Determine if there is any evidence that the First Minister attempted to use information discussed during those meetings and discussions to influence the conduct of the investigation being undertaken by the Permanent Secretary into allegations made against Mr Salmond under the Procedure.
5. Provide the First Minister with a report setting out the findings and conclusions with regard to:
 - i. whether the Ministerial Code is engaged regarding the meetings and discussions;
 - ii. whether there has been any breach of the Code and the nature of any such breach; and
 - iii. if a breach has occurred, advice on the appropriate remedy or sanction.

The Independent Adviser is further invited to consider and offer views on whether the Ministerial Code might need revision to reflect the terms of the Procedure and the strict limitations it places on the involvement of the First Minister in cases which fall to be considered under the Procedure.

Timing

The Independent Adviser is invited to commence the investigation and submit a report as soon as possible.

Publication

The terms of this remit and appointment letter will be published.

The final report will be published. If required in order to avoid any risk of impacting on, or prejudicing, the police investigations or any criminal proceedings, a report may be published with any redactions thought necessary by the Independent Advisers. If redactions are required for legal reasons, a full, un-redacted version of the report will be published following the conclusion of any criminal proceedings, including any appeal, reflecting any legal reporting restrictions that are applied.

Payment

Appointment as an Independent Adviser does not attract payment. Reasonable travel and subsistence costs will be paid in line with normal Civil Service rules.

Secretariat

The Scottish Government will provide secretariat support as required.

Scottish Government
January 2019

FW: Scottish Ministerial Code

From: Hynd JS (James) <james.hynd@gov.scot>
To: [REDACTED]@gov.scot>
Date: Wed, 23 Jan 2019 15:29:23 +0000

[REDACTED]

Could you place in the folder please. Thanks

James
James Hynd
Head of Cabinet, Parliament and Governance Division
Room 4N:03
St Andrew's House
Edinburgh
[REDACTED]

-----Original Message-----

From: Hynd JS (James)
Sent: 23 January 2019 15:29
To: 'Harvie, David' <David.Harvie@copfs.gsi.gov.uk>
Subject: RE: Scottish Ministerial Code

David

I am sorry to press you but I was wondering if you might be able to say when you will be in a position to offer a view on this?

Regards

James
James Hynd
Head of Cabinet, Parliament and Governance Division Room 4N:03 St Andrew's House
[REDACTED]

-----Original Message-----

From: Harvie, David <David.Harvie@copfs.gsi.gov.uk>
Sent: 17 January 2019 21:50
To: Hynd JS (James) <James.Hynd@gov.scot>
Subject: Re: Scottish Ministerial Code

Many thanks James

We will give this careful consideration and revert.

Best wishes,

David

On 17 January 2019 at 18:53:36 GMT, James.Hynd@gov.scot wrote:

Please find attached a 1 page letter to David Harvie, with 3 page attachment.

Kind regards

James

James Hynd

Head of Cabinet, Parliament and Governance Division

Scottish Government

Room 4N:03

St Andrew's House

Edinburgh



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Ministerial Code: Referral to Independent Advisers

First Minister Nicola Sturgeon has today confirmed that she will make a referral to the panel of independent advisers on the Ministerial Code.

Confirming the referral, the First Minister said:

“It is in the interests of the women who have complained that the ongoing police investigations are allowed to continue without any risk of prejudice. That must be the priority for everyone.

“Questions have been raised about my meetings and telephone calls with Alex Salmond during the Government’s investigation into the complaints which were made.

“I have acted appropriately and in good faith throughout, and in compliance with the Ministerial Code at all times. However, I have reflected carefully and understand that it is also important for Parliament and the wider public to be assured of that.

“I have therefore decided to refer the matter for consideration by one or both of the Independent Advisers on the Ministerial Code.

“The Independent Advisers will now be consulted on their precise remit, and advice will also be sought on how to ensure that there is no risk of prejudice to the ongoing police investigation. The remit will be published in due course.

“The fact remains that at the centre of this issue are two women whose complaints could not be swept under the carpet. Any continuing commentary about these issues at this stage – whether from myself, the Government or Mr Salmond and his representatives – would only serve to distract from and potentially compromise the proper consideration by the police of the subject matter of their investigations. That is something we will not do.”

Crown Office and Procurator Fiscal Service

Crown Office, 25 Chambers Street, Edinburgh, EH1 1LA

Crown Agent's Office



James Hynd
Head of Cabinet
Parliament & Governance Division
Scottish Government
Room 4N:03
St Andrews House
EDINBURGH

Tel: [REDACTED]
RNID Typetalk prefix: [REDACTED]

Date: 24 January 2019

Dear James

SCOTTISH MINISTERIAL CODE

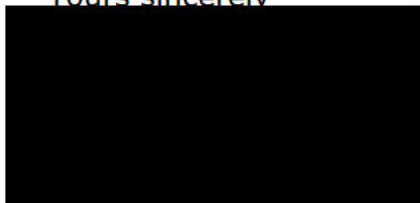
Thank you for your letter of 17 January 2019, together with enclosures.

I note that the First Minister has announced her intention to refer herself to the Independent Advisors on the Scottish Ministerial Code, in respect of allegations that there has been a breach of the Code in relation to meetings and discussions that the First Minister had last year with the former First Minister, the Rt Honourable Alex Salmond.

You have asked for advice on whether a parallel investigation by the Independent Advisors in the terms set out in the draft remit risks prejudicing or otherwise impacting on the police investigation and any possible criminal proceedings.

You will by now be aware that the police investigation has reached the point of arrest and charge. Proceedings are now active for the purposes of the Contempt of Court Act 1981. The police investigation is ongoing. Doubtless the Scottish Government will wish to take its own legal advice on the impact this may have on the Independent Advisors investigation. I cannot offer any advice on the content of the remit. Nor can I offer any reassurance that there would be no risk of prejudice to the fairness of the criminal investigation were the Independent Advisors to proceed with an investigation per the terms of the draft remit.

Yours sincerely



DAVID HARVIE
Crown Agent

From: Hynd JS (James) <James.Hynd@gov.scot>
Sent: 30 January 2019 20:09
To: [REDACTED] <[REDACTED]@gov.scot>
Cc: [REDACTED] <[REDACTED]@gov.scot>
Subject: FW: Ministerial Code Referral

[REDACTED]

Can you place in the folder please. Thanks

James

James Hynd
Head of Cabinet, Parliament and Governance Division
Room 4N:03
St Andrew's House
Edinburgh
Internal ext [REDACTED]
[REDACTED]

From: James Hamilton <[REDACTED]>
Sent: 30 January 2019 19:08
To: Hynd JS (James) <James.Hynd@gov.scot>
Subject: Re: Ministerial Code Referral

Dear Mr Hynd,

Thank you for your letter dated 30 January 2019 sent by email.

I should begin by making it clear that, as you are aware, I cannot and do not purport to give legal advice to the Scottish Government as I am not a person qualified in Scottish law. My professional experience was as a former practitioner at the Bar of Ireland, subsequently as a legal adviser in the Office of the Attorney General of Ireland where I was permanent head of office for over four years followed by just over twelve years as Director of Public Prosecutions of Ireland.

I note that the Crown Agent of Scotland could not provide any reassurance that there would be no risk of prejudice to the fairness of the criminal investigation (now a prosecution) were the investigation by the Independent Advisers to proceed in the terms of the draft remit. I have no reason whatsoever to disagree with that assessment. As well as being a very senior Scots lawyer the Crown Agent is no doubt aware of the case the prosecution intends to present. I have no such knowledge. No investigation into the alleged criminal offences with which the former First Minister is now charged will, of course, form any part of the draft

remit given to the Independent Advisers and such issues are exclusively for the prosecutors, the police and ultimately the courts of Scotland.

The scope of the remit given to Independent Advisers to advise on alleged breaches of the Ministerial Code is entirely a matter for the First Minister to determine. With regard to the possibility of minimising any risk to the integrity of the criminal prosecution it seems from my admittedly very limited knowledge on the facts of the case at this stage that the two matters likely to present the greatest potential risk of interference with the criminal prosecution are, firstly, the allegation that the First Minister failed to report discussions she had with her predecessor, in which the substance and the character of those discussions is likely to be important, and secondly, the suggestion that the First Minister attempted to interfere with the Scottish Government's own enquiry into allegations of harassment, allegations which may overlap with or be related to the allegations which are now the subject-matter of criminal charges.

That is not to say that consideration of these two issues by the Independent Advisers would definitely lead to prejudice, but that there is a risk. That risk could be mitigated by postponing publication of the Independent Advisers' report, but perhaps not altogether eliminated. These two matters appear to be at the core of the proposed remit and without enquiring into them there would seem to be little or no basis on which the Independent Advisers could advise whether the Ministerial Code was breached.

I therefore concur with the conclusion that reducing the scope of the remit would unduly restrict the Independent Advisers' ability to investigate fully the questions of conduct that have been raised.

In conclusion I think there would be a substantial risk either that an attempt to conduct an enquiry while criminal proceedings are in being could create a risk of prejudice, or else, resulting from attempts to avoid such an outcome, lead to an inconclusive result. A further consideration is that the Independent Advisers have no power to compel witnesses and one has to wonder whether persons involved in the forthcoming criminal trial would be willing to cooperate with the Independent Advisers in advance of that trial.

For these reason I believe that the wiser and the proper course of action is to defer the referral of possible breaches of the Ministerial Code until after the conclusion of criminal proceedings.

Yours sincerely,

James Hamilton
Independent Adviser on the Scottish Ministerial Code

On Wed, 30 Jan 2019 at 14:10, <James.Hynd@gov.scot> wrote:
Dear Mr Hamilton

Please find attached a further letter and attachment.

With best wishes

James

James Hynd
Head of Cabinet, Parliament and Governance Division
Scottish Government
Room 4N:03
St Andrew's House
Edinburgh
Internal ext [REDACTED]
[REDACTED]

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Dh'fhaodadh gum bi teachdaireachd sam bith bho Riaghaltas na h-Alba air a chlàradh neo air a sgrùdadh airson dearbhadh gu bheil an siostam ag obair gu h-èifeachdach neo airson adhbhar laghail eile. Dh'fhaodadh nach eil beachdan anns a' phost-d seo co-ionann ri beachdan Riaghaltas na h-Alba.

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From: Hynd JS (James) <James.Hynd@gov.scot>
Sent: 30 January 2019 20:09
To: [REDACTED] <[REDACTED]@gov.scot>
Subject: FW: Ministerial Code Referral

[REDACTED]

For the folder please.

James

James Hynd
Head of Cabinet, Parliament and Governance Division
Room 4N:03
St Andrew's House
Edinburgh
Internal ext [REDACTED]
[REDACTED]

From: Hynd JS (James)
Sent: 30 January 2019 20:08
To: 'James Hamilton' <[REDACTED]>
Subject: RE: Ministerial Code Referral

Dear Mr Hamilton

I am writing to acknowledge, with thanks, your email below. The contents will be given very careful attention. I will revert to you as soon as I can.

Best wishes

James

James Hynd
Head of Cabinet, Parliament and Governance Division
Room 4N:03
St Andrew's House
Edinburgh
Internal ext [REDACTED]
[REDACTED]

From: James Hamilton <[REDACTED]>
Sent: 30 January 2019 19:08
To: Hynd JS (James) <James.Hynd@gov.scot>
Subject: Re: Ministerial Code Referral

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I note that the Crown Agent of Scotland could not provide any reassurance that there would be no risk of prejudice to the fairness of the criminal investigation (now a prosecution) were the investigation by the Independent Advisers to proceed in the terms of the draft remit. I have no reason whatsoever to disagree with that assessment. As well as being a very senior Scots lawyer the Crown Agent is no doubt aware of the case the prosecution intends to present. I have no such knowledge. No investigation into the alleged criminal offences with which the former First Minister is now charged will, of course, form any part of the draft remit given to the Independent Advisers and such issues are exclusively for the prosecutors, the police and ultimately the courts of Scotland.

The scope of the remit given to Independent Advisers to advise on alleged breaches of the Ministerial Code is entirely a matter for the First Minister to determine. With regard to the possibility of minimising any risk to the integrity of the criminal prosecution it seems from my admittedly very limited knowledge on the facts of the case at this stage that the two matters likely to present the greatest potential risk of interference with the criminal prosecution are, firstly, the allegation that the First Minister failed to report discussions she had with her predecessor, in which the substance and the character of those discussions is likely to be important, and secondly, the suggestion that the First Minister attempted to interfere with the Scottish Government's own enquiry into allegations of harassment, allegations which may overlap with or be related to the allegations which are now the subject-matter of criminal charges.

That is not to say that consideration of these two issues by the Independent Advisers would definitely lead to prejudice, but that there is a risk. That risk could be mitigated by postponing publication of the Independent Advisers' report, but perhaps not altogether eliminated. These two matters appear to be at the core of the proposed remit and without enquiring into them there would seem to be little or no basis on which the Independent Advisers could advise whether the Ministerial Code was breached.

I therefore concur with the conclusion that reducing the scope of the remit would unduly restrict the Independent Advisers' ability to investigate fully the questions of conduct that have been raised.

In conclusion I think there would be a substantial risk either that an attempt to conduct an enquiry while criminal proceedings are in being could create a risk of prejudice, or else, resulting from attempts to avoid such an outcome, lead to an inconclusive result. A further consideration is that the Independent Advisers have no power to compel witnesses and one has to wonder whether persons involved in the forthcoming criminal trial would be willing to cooperate with the Independent Advisers in advance of that trial.

For these reason I believe that the wiser and the proper course of action is to defer the referral of possible breaches of the Ministerial Code until after the conclusion of criminal proceedings.

Yours sincerely,

James Hamilton
Independent Adviser on the Scottish Ministerial Code

On Wed, 30 Jan 2019 at 14:10, <James.Hynd@gov.scot> wrote:
Dear Mr Hamilton

Please find attached a further letter and attachment.

With best wishes

James

James Hynd
Head of Cabinet, Parliament and Governance Division
Scottish Government
Room 4N:03
St Andrew's House
Edinburgh
Internal ext [REDACTED]
[REDACTED]

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Tha am post-d seo (agus faidhle neo ceanglan còmhla ris) dhan neach neo luchd-ainmichte a-mhàin. Chan eil e ceadaichte a chleachdadh ann an dòigh sam bith, a' toirt a-steach còraichean, foillseachadh neo sgaoileadh, gun chead. Ma 's e is gun d'fhuair sibh seo gun fhiosd', bu choir cur às dhan phost-d agus lethbhreac sam bith air an t-siostam agaibh agus fios a leigeil chun neach a sgaoil am post-d gun dàil.

Dh'fhaodadh gum bi teachdaireachd sam bith bho Riaghaltas na h-Alba air a chlàradh neo air a sgrùdadh airson dearbhadh gu bheil an siostam ag obair gu h-èifeachdach neo airson adhbhar laghail eile. Dh'fhaodadh nach eil beachdan anns a' phost-d seo co-ionann ri beachdan Riaghaltas na h-Alba.

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From: James Hynd
Cabinet Secretariat
30 January 2019

First Minister

SCOTTISH MINISTERIAL CODE REFERRAL

Purpose

1. To provide advice on the next steps in the handling of the Ministerial Code inquiry.

Timing

2. **Immediate.**

Background

3. When you announced on 13 January your decision to refer yourself to the Independent Advisers you said that:

“The Independent Advisers will now be consulted on their precise remit, and advice will also be sought on how to ensure that there is no risk of prejudice to the ongoing police investigation. The remit will be published in due course.”

4. In order to consider the question of the risk of prejudice, I have been in contact with both the Crown Agent and James Hamilton. I provided each with the terms of the remit for the referral as set out at Annex A (this may need minor adjustments in light of decisions to be made). As you know, Dame Elish Angiolini has recused herself as she is undertaking a separate, unrelated inquiry for Scottish Ministers.

5. The Crown Agent’s response is provided in full at Annex B. He notes that he is unable to provide us with legal advice on the matter. He goes on to say in his letter:

“I cannot offer any advice on the content of the remit. Nor can I offer any reassurance that there would be no risk of prejudice to the fairness of the criminal investigation were the Independent Advisers to proceed with an investigation per the terms of the draft remit.”

6. Mr Hamilton has also considered the remit and has responded to me today. His full response is at Annex C. He summarises his view as follows:

“I believe that the wiser and the proper course of action is to defer the referral of possible breaches of the Ministerial Code until after the conclusion of criminal proceedings.”

Discussion

7. While the Crown Agent has not provided advice, he is unable to offer any reassurance that there would be no risk of prejudice were the Ministerial Code

investigation to proceed. Mr Hamilton, who is a former Director of Public Prosecutions at the Irish Office of the Director of Public Prosecutions, has expressed clear concerns about conducting a referral while proceedings are active.

8. [REDACTED] I further understand that the ad hoc Committee being established by the Parliament to consider these matters is also likely to defer commencing its inquiry while proceedings are active.

9. I have considered whether it might be possible to revise the remit of the Ministerial Code referral to minimise any possible risk to the criminal investigation. Reducing the scope of the remit runs the risk of unduly restricting the ability of the Independent Advisers to investigate fully the questions of conduct that have been raised. Neither could we be sure that even a restricted remit would not have the potential to interfere with the criminal proceedings in some way. We therefore need to balance the public interest in proceeding with an early referral that was broad enough to address fully the concerns that have been raised, with that of ensuring that there is no risk of prejudice to the fairness of the criminal investigation.

Conclusion

10. In light of the letter received from the Crown Agent, and the clear views expressed by Mr Hamilton, it would appear that there is a substantial risk of prejudice arising to the fairness of the criminal investigation if the Ministerial Code referral was to be conducted while those investigations are active. Those risks, in my view, outweigh the benefits of proceeding with an early referral.

11. On that basis, I consider that the safest way to proceed would be to defer the commencement of the Ministerial Code inquiry while criminal investigations are active. **You are invited to indicate if you are content with that approach.**

12. To further minimise any risk of potential prejudice, I consider that we should also avoid publishing the terms of the remit. [REDACTED]

13. If you are content, it would be possible for DFM to announce this position tomorrow at the same time as he is informing Parliament about the deferral of the SG's internal review. Potential wording that could be used might be:

"The same risk of unintentional prejudice also applies to the First Minister's self-referral under the Ministerial Code. Following discussions James Hamilton, the Independent Adviser on the Ministerial Code, it has been agreed that the inquiry under the Ministerial Code should also be deferred while criminal investigations are active."

James Hynd
Cabinet Secretariat
30 January 2019

Copy List:	For Actio n	For Comm ents	For Information		
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		x			

Permanent Secretary
Paul Johnston
Colin Troup
John Somers
Tim Ellis
Colin McAllister

Ministerial Code: Remit for Independent Adviser

Background

It has been alleged that the First Minister breached the Scottish Ministerial Code in that she failed to feed back the basic facts of meetings and discussions held with Alex Salmond to her private office as required by sections 4.22 and 4.23 of the Code. The meetings and discussions in question took place on:

- 2 April 2018 - Meeting between Ms Sturgeon and Mr Salmond at Ms Sturgeon's home.
- 23 April 2018 - Telephone conversation between Ms Sturgeon and Mr Salmond.
- 7 June 2018 - Meeting between Ms Sturgeon and Mr Salmond at SNP Conference, Aberdeen.
- 14 July 2018 - Meeting between Ms Sturgeon and Mr Salmond at Ms Sturgeon's home.
- 18 July 2018 - Telephone conversation between Ms Sturgeon and Mr Salmond.

It has been further suggested that, in light of those meetings, the First Minister may have attempted to influence the conduct of the investigation then being undertaken by the Permanent Secretary into allegations made against Mr Salmond under the Procedure for Handling of Harassment Complaints involving Current or Former Ministers ("the Procedure").

Scottish Ministerial Code

The key relevant extracts from the Code are:

1.6. Ministers are personally responsible for deciding how to act and conduct themselves in the light of the Ministerial Code and for justifying their actions to Parliament and the public. The First Minister is, however, the ultimate judge of the standards of behaviour expected of a Minister and of the appropriate consequences of a breach of those standards. Although the First Minister will not expect to comment on every matter which could conceivably be brought to his or her attention, Ministers can only remain in office for so long as they retain the First Minister's confidence.

1.7. Where he or she deems it appropriate, the First Minister may refer matters to the independent advisers on the Ministerial Code to provide him or her with advice on which to base his or her judgement about any action required in respect of Ministerial conduct. The findings of the independent advisers will be published.

Contacts with External Individuals and Organisations, including Outside Interest Groups and Lobbyists

4.22 Ministers meet many people and organisations and consider a wide range of views as part of the formulation of Government policy. Meetings on official business should normally be arranged through Private Offices. A private secretary or official should be present for all discussions relating to Government business. Private Offices should arrange for the basic facts of formal meetings between Ministers and outside interest groups to be recorded, setting out the reasons for the meeting, the names of those attending and the interests represented. A monthly list of engagements carried out by all Ministers is published three months in arrears.

4.23 If Ministers meet external organisations or individuals and find themselves discussing official business without an official present – for example at a party conference, social occasion or on holiday – any significant content (such as substantive issues relating to Government decisions or contracts) should be passed back to their Private Offices as soon as possible after the event, who should arrange for the basic facts of such meetings to be recorded in accordance with paragraph 4.22 above.

The First Minister has, accordingly, referred the matter for consideration by one or both Independent Advisers for advice on which to base her judgement about any action required in accordance with the Code.

Remit

The remit for the referral is to:

1. Review any relevant documentation relating to the meetings and discussions listed above.
2. Interview any Minister or official of the Scottish Government, including Special Advisers, who may have any knowledge of the facts and content of the meetings and discussions, to assess whether the Ministerial Code is engaged and, if so, whether the terms of the Code have been complied with.
3. Interview any relevant person outwith the Scottish Government, including the former First Minister, Alex Salmond, who may have information relating to the facts and content of the meetings and discussions.
4. Determine if there is any evidence that the First Minister attempted to use information discussed during those meetings and discussions to influence the conduct of the investigation being undertaken by the Permanent Secretary into allegations made against Mr Salmond under the Procedure.
5. Provide the First Minister with a report setting out the findings and conclusions with regard to:
 - i. whether the Ministerial Code is engaged regarding the meetings and discussions;
 - ii. whether there has been any breach of the Code and the nature of any such breach; and
 - iii. if a breach has occurred, advice on the appropriate remedy or sanction.
6. The Independent Adviser is further invited to consider and offer views on whether the Ministerial Code might need revision to reflect the terms of the Procedure and the strict limitations it places on the involvement of the First Minister in cases which fall to be considered under the Procedure.

Timing

The Independent Adviser is invited to commence the investigation and submit a report as soon as possible.

Publication

The terms of this remit and appointment letter will be published.

The final report will be published. If required in order to avoid any risk of impacting on, or prejudicing, the police investigations or any criminal proceedings, a report may be published with any redactions thought necessary by the Independent Advisers. If redactions are required for legal reasons, a full, un-redacted version of the report will be published following the conclusion of any criminal proceedings, including any appeal, reflecting any legal reporting restrictions that are applied.

Payment

Appointment as an Independent Adviser does not attract payment. Reasonable travel and subsistence costs will be paid in line with normal Civil Service rules.

Secretariat

The Scottish Government will provide secretariat support as required.

Scottish Government
January 2019

Annex B

Crown Office and Procurator Fiscal Service

Crown Office, 25 Chambers Street, Edinburgh, EH1 1LA
Crown Agent's Office

James Hynd
Head of Cabinet
Parliament & Governance Division
Scottish Government
Room 4N:03
St Andrews House
EDINBURGH

Tel: 0131 243 3399
RNID Typetalk prefix: 18001

Date: 24 January 2019

Dear James

SCOTTISH MINISTERIAL CODE

Thank you for your letter of 17 January 2019, together with enclosures.

I note that the First Minister has announced her intention to refer herself to the Independent Advisors on the Scottish Ministerial Code, in respect of allegations that there has been a breach of the Code in relation to meetings and discussions that the First Minister had last year with the former First Minister, the Rt Honourable Alex Salmond.

You have asked for advice on whether a parallel investigation by the Independent Advisors in the terms set out in the draft remit risks prejudicing or otherwise impacting on the police investigation and any possible criminal proceedings.

You will by now be aware that the police investigation has reached the point of arrest and charge. Proceedings are now active for the purposes of the Contempt of Court Act 1981. The police investigation is ongoing. Doubtless the Scottish Government will wish to take its own legal advice on the impact this may have on the Independent Advisors investigation. I cannot offer any advice on the content of the remit. Nor can I offer any reassurance that there would be no risk of prejudice to the fairness of the criminal investigation were the Independent Advisors to proceed with an investigation per the terms of the draft remit.

Yours sincerely

A handwritten signature in black ink, appearing to read 'David Harvie', with a stylized flourish at the end.

DAVID HARVIE
Crown Agent

Email received from James Hamilton - 19:08 30 January 2019

Dear Mr Hynd,

Thank you for your letter dated 30 January 2019 sent by email.

I should begin by making it clear that, as you are aware, I cannot and do not purport to give legal advice to the Scottish Government as I am not a person qualified in Scottish law. My professional experience was as a former practitioner at the Bar of Ireland, subsequently as a legal adviser in the Office of the Attorney General of Ireland where I was permanent head of office for over four years followed by just over twelve years as Director of Public Prosecutions of Ireland.

I note that the Crown Agent of Scotland could not provide any reassurance that there would be no risk of prejudice to the fairness of the criminal investigation (now a prosecution) were the investigation by the Independent Advisers to proceed in the terms of the draft remit. I have no reason whatsoever to disagree with that assessment. As well as being a very senior Scots lawyer the Crown Agent is no doubt aware of the case the prosecution intends to present. I have no such knowledge. No investigation into the alleged criminal offences with which the former First Minister is now charged will, of course, form any part of the draft remit given to the Independent Advisers and such issues are exclusively for the prosecutors, the police and ultimately the courts of Scotland.

The scope of the remit given to Independent Advisers to advise on alleged breaches of the Ministerial Code is entirely a matter for the First Minister to determine. With regard to the possibility of minimising any risk to the integrity of the criminal prosecution it seems from my admittedly very limited knowledge on the facts of the case at this stage that the two matters likely to present the greatest potential risk of interference with the criminal prosecution are, firstly, the allegation that the First Minister failed to report discussions she had with her predecessor, in which the substance and the character of those discussions is likely to be important, and secondly, the suggestion that the First Minister attempted to interfere with the Scottish Government's own enquiry into allegations of harassment, allegations which may overlap with or be related to the allegations which are now the subject-matter of criminal charges.

That is not to say that consideration of these two issues by the Independent Advisers would definitely lead to prejudice, but that there is a risk. That risk could be mitigated by postponing publication of the Independent Advisers' report, but perhaps not altogether eliminated. These two matters appear to be at the core of the proposed remit and without enquiring into them there would seem to be little or no basis on which the Independent Advisers could advise whether the Ministerial Code was breached.

I therefore concur with the conclusion that reducing the scope of the remit would unduly restrict the Independent Advisers' ability to investigate fully the questions of conduct that have been raised.

In conclusion I think there would be a substantial risk either that an attempt to conduct an enquiry while criminal proceedings are in being could create a risk of prejudice, or else, resulting from attempts to avoid such an outcome, lead to an inconclusive result. A further consideration is that the Independent Advisers have no power to compel witnesses and one has to wonder whether persons involved in the forthcoming criminal trial would be willing to cooperate with the Independent Advisers in advance of that trial.

For these reason I believe that the wiser and the proper course of action is to defer the referral of possible breaches of the Ministerial Code until after the conclusion of criminal proceedings.

Yours sincerely,

James Hamilton

Independent Adviser on the Scottish Ministerial Code

From: Hynd JS (James) <James.Hynd@gov.scot>
Sent: 31 January 2019 10:11
To: [REDACTED] <[REDACTED]@gov.scot>
Cc: [REDACTED] <[REDACTED]@gov.scot>
Subject: FW: Ministerial Code

[REDACTED]

For the folder please.

James

James Hynd
Head of Cabinet, Parliament and Governance Division
Room 4N:03
St Andrew's House
Edinburgh
Internal ext [REDACTED]
[REDACTED]

From: [REDACTED] <[REDACTED]@gov.scot> **On Behalf Of** Deputy First Minister and Cabinet Secretary for Education and Skills
Sent: 31 January 2019 09:57
To: First Minister <firstminister@gov.scot>; Hynd JS (James) <James.Hynd@gov.scot>; Deputy First Minister and Cabinet Secretary for Education and Skills <DFMCSE@gov.scot>
Cc: Lord Advocate <LordAdvocate@gov.scot>; Permanent Secretary <PermanentSecretary@gov.scot>; Johnston P (Paul) <Paul.Johnston@gov.scot>; Legal Secretariat to the Lord Advocate <DLPCEALSLA@gov.scot>; Troup C (Colin) (Dr) <Colin.Troup@gov.scot>; Ellis T (Tim) <Tim.Ellis@gov.scot>; McAllister C (Colin) <Colin.McAllister@gov.scot>; [REDACTED] <[REDACTED]@gov.scot>; [REDACTED] <[REDACTED]@gov.scot>
Subject: RE: Ministerial Code

James,

The Deputy First Minister agrees with the contents of this advice to defer the Ministerial Code referral and by separate cover is finalising a GIQ to be answered today.

Thanks,
[REDACTED]

[REDACTED] | Private Secretary to John Swinney MSP | Deputy First Minister of Scotland and Cabinet Secretary for Education and Skills | Scottish Government | St Andrew's House | Edinburgh | EH1 3DG | [REDACTED] / [REDACTED]

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From: Somers J (John) <John.Somers@gov.scot> **On Behalf Of** First Minister

Sent: 30 January 2019 21:03

To: Hynd JS (James) <James.Hynd@gov.scot>; First Minister <firstminister@gov.scot>; Deputy First Minister and Cabinet Secretary for Education and Skills <DFMCSE@gov.scot>

Cc: Lord Advocate <LordAdvocate@gov.scot>; Permanent Secretary <PermanentSecretary@gov.scot>; Johnston P (Paul) <Paul.Johnston@gov.scot>; Legal Secretariat to the Lord Advocate <DLPCEALSLA@gov.scot>; Troup C (Colin) (Dr) <Colin.Troup@gov.scot>; Ellis T (Tim) <Tim.Ellis@gov.scot>; McAllister C (Colin) <Colin.McAllister@gov.scot>; [REDACTED] <[REDACTED]@gov.scot>; [REDACTED] <[REDACTED]@gov.scot>

Subject: RE: Ministerial Code

Importance: High

James,

Thank you for the attached advice. The First Minister has responded that while the recommendation at paragraph 11 seems appropriate given the views expressed by the Crown Agent and the Independent Adviser, the FM would prefer to delegate the final decision on this matter to the Deputy First Minister.

Grateful if you would advise the Deputy First Minister accordingly.

John

John Somers

Principal Private Secretary to the First Minister
Scottish Government

Work: [REDACTED]

Mob: [REDACTED]



Office of the First Minister of Scotland

FirstMinister.gov.scot

Prìomh Mhinistear na h-Alba

All e-mails and attachments sent by a Ministerial Private Office to any other official on behalf of a Minister relating to a decision, request or comment made by a Minister, or a note of a

Ministerial meeting, must be filed appropriately by the recipient. Private Offices do not keep official records of such e-mails or attachments. Scottish Ministers, Special advisers and the Permanent Secretary are covered by the terms of the Lobbying (Scotland) Act 2016. See www.lobbying.scot

From: Hynd JS (James) <James.Hynd@gov.scot>

Sent: 30 January 2019 19:57

To: First Minister <firstminister@gov.scot>

Cc: Lord Advocate <LordAdvocate@gov.scot>; Permanent Secretary <PermanentSecretary@gov.scot>; Johnston P (Paul) <Paul.Johnston@gov.scot>; Legal Secretariat to the Lord Advocate <DLPCEALSIA@gov.scot>; Troup C (Colin) (Dr) <Colin.Troup@gov.scot>; Somers J (John) <John.Somers@gov.scot>; Ellis T (Tim) <Tim.Ellis@gov.scot>; McAllister C (Colin) <Colin.McAllister@gov.scot>; [REDACTED] <[REDACTED]@gov.scot>; [REDACTED] <[REDACTED]@gov.scot>

Subject: Ministerial Code

Top copy First Minister

James

James Hynd
Head of Cabinet, Parliament and Governance Division
Room 4N:03
St Andrew's House
Edinburgh
Internal ext [REDACTED]
[REDACTED]

From: Hynd JS (James) <James.Hynd@gov.scot>
Sent: 31 January 2019 10:13
To: [REDACTED]@gov.scot>
Cc: [REDACTED] <[REDACTED]@gov.scot>
Subject: FW: Ministerial Code

[REDACTED]

For the folder please.

James

James Hynd
Head of Cabinet, Parliament and Governance Division
Room 4N:03
St Andrew's House
Edinburgh
Internal ext [REDACTED]
[REDACTED]

From: Hynd JS (James)
Sent: 30 January 2019 19:57
To: First Minister <firstminister@gov.scot>
Cc: Lord Advocate <LordAdvocate@gov.scot>; Permanent Secretary <PermanentSecretary@gov.scot>; Johnston P (Paul) <Paul.Johnston@gov.scot>; Legal Secretariat to the Lord Advocate <DLPCEALSLA@gov.scot>; Troup C (Colin) (Dr) <Colin.Troup@gov.scot>; Somers J (John) <John.Somers@gov.scot>; Ellis T (Tim) <Tim.Ellis@gov.scot>; McAllister C (Colin) <Colin.McAllister@gov.scot>; [REDACTED] <[REDACTED]@gov.scot>; [REDACTED] <[REDACTED]@gov.scot>
Subject: Ministerial Code

Top copy First Minister

James

James Hynd
Head of Cabinet, Parliament and Governance Division
Room 4N:03
St Andrew's House
Edinburgh
Internal ext [REDACTED]
[REDACTED]

From: James Hynd
Cabinet Secretariat
30 January 2019

First Minister

SCOTTISH MINISTERIAL CODE REFERRAL

Purpose

1. To provide advice on the next steps in the handling of the Ministerial Code inquiry.

Timing

2. **Immediate.**

Background

3. When you announced on 13 January your decision to refer yourself to the Independent Advisers you said that:

“The Independent Advisers will now be consulted on their precise remit, and advice will also be sought on how to ensure that there is no risk of prejudice to the ongoing police investigation. The remit will be published in due course.”

4. In order to consider the question of the risk of prejudice, I have been in contact with both the Crown Agent and James Hamilton. I provided each with the terms of the remit for the referral as set out at Annex A (this may need minor adjustments in light of decisions to be made). As you know, Dame Elish Angiolini has recused herself as she is undertaking a separate, unrelated inquiry for Scottish Ministers.

5. The Crown Agent’s response is provided in full at Annex B. He notes that he is unable to provide us with legal advice on the matter. He goes on to say in his letter:

“I cannot offer any advice on the content of the remit. Nor can I offer any reassurance that there would be no risk of prejudice to the fairness of the criminal investigation were the Independent Advisers to proceed with an investigation per the terms of the draft remit.”

6. Mr Hamilton has also considered the remit and has responded to me today. His full response is at Annex C. He summarises his view as follows:

“I believe that the wiser and the proper course of action is to defer the referral of possible breaches of the Ministerial Code until after the conclusion of criminal proceedings.”

Discussion

7. While the Crown Agent has not provided advice, he is unable to offer any reassurance that there would be no risk of prejudice were the Ministerial Code investigation to proceed. Mr Hamilton, who is a former Director of Public Prosecutions

at the Irish Office of the Director of Public Prosecutions, has expressed clear concerns about conducting a referral while proceedings are active.

8. [REDACTED] I further understand that the ad hoc Committee being established by the Parliament to consider these matters is also likely to defer commencing its inquiry while proceedings are active.

9. I have considered whether it might be possible to revise the remit of the Ministerial Code referral to minimise any possible risk to the criminal investigation. Reducing the scope of the remit runs the risk of unduly restricting the ability of the Independent Advisers to investigate fully the questions of conduct that have been raised. Neither could we be sure that even a restricted remit would not have the potential to interfere with the criminal proceedings in some way. We therefore need to balance the public interest in proceeding with an early referral that was broad enough to address fully the concerns that have been raised, with that of ensuring that there is no risk of prejudice to the fairness of the criminal investigation.

Conclusion

10. In light of the letter received from the Crown Agent, and the clear views expressed by Mr Hamilton, it would appear that there is a substantial risk of prejudice arising to the fairness of the criminal investigation if the Ministerial Code referral was to be conducted while those investigations are active. Those risks, in my view, outweigh the benefits of proceeding with an early referral.

11. On that basis, I consider that the safest way to proceed would be to defer the commencement of the Ministerial Code inquiry while criminal investigations are active. **You are invited to indicate if you are content with that approach.**

12. To further minimise any risk of potential prejudice, I consider that we should also avoid publishing the terms of the remit. [REDACTED]

13. If you are content, it would be possible for DFM to announce this position tomorrow at the same time as he is informing Parliament about the deferral of the SG's internal review. Potential wording that could be used might be:

"The same risk of unintentional prejudice also applies to the First Minister's self-referral under the Ministerial Code. Following discussions James Hamilton, the Independent Adviser on the Ministerial Code, it has been agreed that the inquiry under the Ministerial Code should also be deferred while criminal investigations are active."

James Hynd
Cabinet Secretariat
30 January 2019

Copy List:

For Information

	For Actio n	For Comm ents	Portfoli o Interes t	Constit Interes t	General Awarene ss
		x			

Permanent Secretary
Paul Johnston

John Somers
Tim Ellis
Colin McAllister

Ministerial Code: Remit for Independent Adviser

Background

It has been alleged that the First Minister breached the Scottish Ministerial Code in that she failed to feed back the basic facts of meetings and discussions held with Alex Salmond to her private office as required by sections 4.22 and 4.23 of the Code. The meetings and discussions in question took place on:

- 2 April 2018 - Meeting between Ms Sturgeon and Mr Salmond at Ms Sturgeon's home.
- 23 April 2018 - Telephone conversation between Ms Sturgeon and Mr Salmond.
- 7 June 2018 - Meeting between Ms Sturgeon and Mr Salmond at SNP Conference, Aberdeen.
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- 18 July 2018 - Telephone conversation between Ms Sturgeon and Mr Salmond.

It has been further suggested that, in light of those meetings, the First Minister may have attempted to influence the conduct of the investigation then being undertaken by the Permanent Secretary into allegations made against Mr Salmond under the Procedure for Handling of Harassment Complaints involving Current or Former Ministers ("the Procedure").

Scottish Ministerial Code

The key relevant extracts from the Code are:

1.6. Ministers are personally responsible for deciding how to act and conduct themselves in the light of the Ministerial Code and for justifying their actions to Parliament and the public. The First Minister is, however, the ultimate judge of the standards of behaviour expected of a Minister and of the appropriate consequences of a breach of those standards. Although the First Minister will not expect to comment on every matter which could conceivably be brought to his or her attention, Ministers can only remain in office for so long as they retain the First Minister's confidence.

1.7. Where he or she deems it appropriate, the First Minister may refer matters to the independent advisers on the Ministerial Code to provide him or her with advice on which to base his or her judgement about any action required in respect of Ministerial conduct. The findings of the independent advisers will be published.

Contacts with External Individuals and Organisations, including Outside Interest Groups and Lobbyists

4.22 Ministers meet many people and organisations and consider a wide range of views as part of the formulation of Government policy. Meetings on official business should normally be arranged through Private Offices. A private secretary or official should be present for all discussions relating to Government business. Private Offices should arrange for the basic facts of formal meetings between Ministers and outside interest groups to be recorded, setting out the reasons for the meeting, the names of those attending and the interests represented. A monthly list of engagements carried out by all Ministers is published three months in arrears.

4.23 If Ministers meet external organisations or individuals and find themselves discussing official business without an official present – for example at a party conference, social occasion or on holiday – any significant content (such as substantive issues relating to Government decisions or contracts) should be passed back to their Private Offices as soon as possible after the event, who should arrange for the basic facts of such meetings to be recorded in accordance with paragraph 4.22 above.

The First Minister has, accordingly, referred the matter for consideration by one or both Independent Advisers for advice on which to base her judgement about any action required in accordance with the Code.

Remit

The remit for the referral is to:

1. Review any relevant documentation relating to the meetings and discussions listed above.
2. Interview any Minister or official of the Scottish Government, including Special Advisers, who may have any knowledge of the facts and content of the meetings and discussions, to assess whether the Ministerial Code is engaged and, if so, whether the terms of the Code have been complied with.
3. Interview any relevant person outwith the Scottish Government, including the former First Minister, Alex Salmond, who may have information relating to the facts and content of the meetings and discussions.
4. Determine if there is any evidence that the First Minister attempted to use information discussed during those meetings and discussions to influence the conduct of the investigation being undertaken by the Permanent Secretary into allegations made against Mr Salmond under the Procedure.
5. Provide the First Minister with a report setting out the findings and conclusions with regard to:
 - i. whether the Ministerial Code is engaged regarding the meetings and discussions;
 - ii. whether there has been any breach of the Code and the nature of any such breach; and
 - iii. if a breach has occurred, advice on the appropriate remedy or sanction.
6. The Independent Adviser is further invited to consider and offer views on whether the Ministerial Code might need revision to reflect the terms of the Procedure and the strict limitations it places on the involvement of the First Minister in cases which fall to be considered under the Procedure.

Timing

The Independent Adviser is invited to commence the investigation and submit a report as soon as possible.

Publication

The terms of this remit and appointment letter will be published.

The final report will be published. If required in order to avoid any risk of impacting on, or prejudicing, the police investigations or any criminal proceedings, a report may be published with any redactions thought necessary by the Independent Advisers. If redactions are required for legal reasons, a full, un-redacted version of the report will be published following the conclusion of any criminal proceedings, including any appeal, reflecting any legal reporting restrictions that are applied.

Payment

Appointment as an Independent Adviser does not attract payment. Reasonable travel and subsistence costs will be paid in line with normal Civil Service rules.

Secretariat

The Scottish Government will provide secretariat support as required.

Scottish Government

January 2019

Annex B

Crown Office and Procurator Fiscal Service

Crown Office, 25 Chambers Street, Edinburgh, EH1 1LA

Crown Agent's Office

James Hynd
Head of Cabinet
Parliament & Governance Division
Scottish Government
Room 4N:03
St Andrews House
EDINBURGH

Tel: [REDACTED]
RNID Typetalk prefix: 18001

Date: 24 January 2019

Dear James

SCOTTISH MINISTERIAL CODE

Thank you for your letter of 17 January 2019, together with enclosures.

I note that the First Minister has announced her intention to refer herself to the Independent Advisors on the Scottish Ministerial Code, in respect of allegations that there has been a breach of the Code in relation to meetings and discussions that the First Minister had last year with the former First Minister, the Rt Honourable Alex Salmond.

You have asked for advice on whether a parallel investigation by the Independent Advisors in the terms set out in the draft remit risks prejudicing or otherwise impacting on the police investigation and any possible criminal proceedings.

You will by now be aware that the police investigation has reached the point of arrest and charge. Proceedings are now active for the purposes of the Contempt of Court Act 1981. The police investigation is ongoing. Doubtless the Scottish Government will wish to take its own legal advice on the impact this may have on the Independent Advisors investigation. I cannot offer any advice on the content of the remit. Nor can I offer any reassurance that there would be no risk of prejudice to the fairness of the criminal investigation were the Independent Advisors to proceed with an investigation per the terms of the draft remit.

Yours sincerely



DAVID HARVIE
Crown Agent

Email received from James Hamilton - 19:08 30 January 2019

Dear Mr Hynd,

Thank you for your letter dated 30 January 2019 sent by email.

I should begin by making it clear that, as you are aware, I cannot and do not purport to give legal advice to the Scottish Government as I am not a person qualified in Scottish law. My professional experience was as a former practitioner at the Bar of Ireland, subsequently as a legal adviser in the Office of the Attorney General of Ireland where I was permanent head of office for over four years followed by just over twelve years as Director of Public Prosecutions of Ireland.

I note that the Crown Agent of Scotland could not provide any reassurance that there would be no risk of prejudice to the fairness of the criminal investigation (now a prosecution) were the investigation by the Independent Advisers to proceed in the terms of the draft remit. I have no reason whatsoever to disagree with that assessment. As well as being a very senior Scots lawyer the Crown Agent is no doubt aware of the case the prosecution intends to present. I have no such knowledge. No investigation into the alleged criminal offences with which the former First Minister is now charged will, of course, form any part of the draft remit given to the Independent Advisers and such issues are exclusively for the prosecutors, the police and ultimately the courts of Scotland.

The scope of the remit given to Independent Advisers to advise on alleged breaches of the Ministerial Code is entirely a matter for the First Minister to determine. With regard to the possibility of minimising any risk to the integrity of the criminal prosecution it seems from my admittedly very limited knowledge on the facts of the case at this stage that the two matters likely to present the greatest potential risk of interference with the criminal prosecution are, firstly, the allegation that the First Minister failed to report discussions she had with her predecessor, in which the substance and the character of those discussions is likely to be important, and secondly, the suggestion that the First Minister attempted to interfere with the Scottish Government's own enquiry into allegations of harassment, allegations which may overlap with or be related to the allegations which are now the subject-matter of criminal charges.

That is not to say that consideration of these two issues by the Independent Advisers would definitely lead to prejudice, but that there is a risk. That risk could be mitigated by postponing publication of the Independent Advisers' report, but perhaps not altogether eliminated. These two matters appear to be at the core of the proposed remit and without enquiring into them there would seem to be little or no basis on which the Independent Advisers could advise whether the Ministerial Code was breached.

I therefore concur with the conclusion that reducing the scope of the remit would unduly restrict the Independent Advisers' ability to investigate fully the questions of conduct that have been raised.

In conclusion I think there would be a substantial risk either that an attempt to conduct an enquiry while criminal proceedings are in being could create a risk of prejudice, or else, resulting from attempts to avoid such an outcome, lead to an inconclusive result. A further consideration is that the Independent Advisers have no power to compel witnesses and one

has to wonder whether persons involved in the forthcoming criminal trial would be willing to cooperate with the Independent Advisers in advance of that trial.

For these reason I believe that the wiser and the proper course of action is to defer the referral of possible breaches of the Ministerial Code until after the conclusion of criminal proceedings.

Yours sincerely,

James Hamilton
Independent Adviser on the Scottish Ministerial Code

From: Hynd JS (James) <James.Hynd@gov.scot>
Sent: 31 January 2019 10:10
To: [REDACTED] <[REDACTED]@gov.scot>
Cc: [REDACTED] <[REDACTED]@gov.scot>
Subject: FW: Ministerial Code Referral

[REDACTED]

For the folder please.

James

James Hynd
Head of Cabinet, Parliament and Governance Division
Room 4N:03
St Andrew's House
Edinburgh
Internal ext [REDACTED]
[REDACTED]

From: Hynd JS (James)
Sent: 31 January 2019 10:10
To: 'James Hamilton' <[REDACTED]>; 'Elish Angiolini' <[REDACTED]>
Subject: Ministerial Code Referral

Dear Mr Hamilton and Dame Elish

You will wish to be aware that Scottish Ministers will this morning announce that neither the First Minister's self-referral under the Scottish Ministerial Code, nor the separate internal review into the Scottish Government's handling of the investigation into the former First Minister Alex Salmond, will be progressed while there are active criminal proceedings.

I attach below the text of the written Parliamentary answer which will shortly be given to the Scottish Parliament by the Deputy First Minister. I should be grateful if you would respect the confidentiality until such time as the answer is published, which should be very soon.

The Scottish Government has arrived at this decision in order to ensure that there is no activity undertaken which may unintentionally prejudice live criminal proceedings, adversely impact the rights of anyone involved in the proceedings or affect the formal criminal process which is now under way.

In addition, for those reasons, we are not currently planning to publish the remit for the Ministerial Code referral that I had previously shared with you.

If you are approached by the media for any comments, may I suggest that you simply refer all enquiries to today's statement. Any further media enquiries can be referred to me and I will pass these on to the appropriate SG Comms officer.

When criminal proceedings are no longer active, we will revert to you about the arrangements for commencing the referral and agreeing the final remit.

In the meantime, many thanks indeed for all assistance in this matter.

Text of Parliamentary Question and Answer

Q: To ask the Scottish Government for an update on the review of its procedure for handling complaints about Ministers or former Ministers and the First Minister's self-referral under the Ministerial code?

A: The Scottish Government is committed to carrying out a review of the application of its procedure for handling complaints about Ministers or former Ministers. The review will be externally led and will examine the first application of the procedure to ensure that lessons are applied for any future complaints that are brought forward.

However, the Scottish Government does not wish to undertake any activity which may unintentionally prejudice live criminal proceedings, adversely impact the rights of anyone involved in the proceedings or affect the formal criminal process which is now under way. As a result, this review of its procedure for handling complaints about Ministers or former Ministers will not be progressed at this stage.

The First Minister's self-referral under the Ministerial Code has been discussed with James Hamilton, the Independent Adviser on the Code. Mr Hamilton has concluded that there is a potential risk of prejudice if the First Minister's self-referral under the Ministerial Code were to proceed at the present time. It has therefore been agreed that the inquiry under the Ministerial Code should also be deferred while criminal investigations are active.

Both the Scottish Government Review and consideration under the Ministerial Code will recommence once criminal proceedings are no longer active and the risk of prejudice has been removed.

With Regards

James

James Hynd
Head of Cabinet, Parliament and Governance Division
Scottish Government
Room 4N:03

St Andrew's House
Edinburgh
Internal ext

Reply to your email- James Hamilton QC

From: [REDACTED] <[REDACTED]@gov.scot>
To: [REDACTED]
Date: Tue, 02 Mar 2021 10:48:53 +0000

Dear Mr Munro,

Thank you for your email of 19 February, concerning the deadline by which James Hamilton, Independent Adviser, will complete his investigation into the First Minister's self-referral under the Scottish Ministerial Code. I have been asked to respond.

As set out in the remit, published in response to PQ S5W-31054, the Independent Adviser was invited to submit a report as soon as possible.

I hope this information is helpful.

Best wishes,

[REDACTED] [REDACTED]

From: Douglas Ross <douglas.ross@advocates.org.uk>

Sent: 02 December 2020 11:03

To: [REDACTED]@gov.scot>

Subject: RE: Correspondence- for comment

[REDACTED]

Many thanks.

[REDACTED]

Regards

Douglas

From: [REDACTED]@gov.scot>

Sent: 01 December 2020 20:49

To: Douglas Ross <douglas.ross@advocates.org.uk>

Subject: RE: Correspondence- for comment

Hi Douglas,

Apologies, this has been sitting in my outbox since early afternoon- as the files are large it hadn't sent.

[REDACTED]

[REDACTED]

[REDACTED]

Best wishes,

[REDACTED]

From: Douglas Ross <douglas.ross@advocates.org.uk>

Sent: 01 December 2020 08:19

To: [REDACTED] <[REDACTED]@gov.scot>

Subject: RE: Correspondence- for comment

Dear [REDACTED]

[REDACTED]

As always, I would be happy to discuss any matters arising by phone.

Regards

Douglas

Douglas Ross QC Ampersand Advocates

phone: [REDACTED]

web: www.ampersandadvocates.com

Clerk: [Alan Moffat](#)

Deputy clerks: [Jennifer Dunn](#), [Sheena Hume](#), [Shawn McArthur](#) & [Kathryn Ferguson](#)



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From: [REDACTED] <[REDACTED]@gov.scot>

Sent: 30 November 2020 17:46

To: Douglas Ross <douglas.ross@advocates.org.uk>

Subject: RE: Correspondence- for comment

Hi Douglas,

Apologies, that's me not reading things carefully enough. [REDACTED]

Best wishes,

From: Douglas Ross <douglas.ross@advocates.org.uk>

Sent: 30 November 2020 17:23

To: [REDACTED] <[\[REDACTED\]@gov.scot](mailto:[REDACTED]@gov.scot)>

Subject: RE: Correspondence- for comment

Many thanks for your prompt reply. A couple of points arising:

Many thanks.

Douglas

From: [REDACTED] <[\[REDACTED\]@gov.scot](mailto:[REDACTED]@gov.scot)>

Sent: 30 November 2020 16:59

To: Douglas Ross <douglas.ross@advocates.org.uk>

Subject: RE: Correspondence- for comment

Hi Douglas,

Turns out my filing system is less dreadful than I thought. [REDACTED]

Best wishes,

From: [REDACTED]
Sent: 30 November 2020 16:49
To: 'Douglas Ross' <douglas.ross@advocates.org.uk>
Subject: RE: Correspondence- for comment

Hi Douglas,

No problem at all. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Best wishes,
[REDACTED]

From: Douglas Ross <douglas.ross@advocates.org.uk>
Sent: 30 November 2020 15:52
To: [REDACTED] <[\[REDACTED\]@gov.scot](mailto:[REDACTED]@gov.scot)>
Subject: RE: Correspondence- for comment

[REDACTED]
I'm starting to look at this now. There are a few documents which I don't think I have seen which may be relevant to my response:
[REDACTED]
[REDACTED]
[REDACTED]

If you were able to send these to me, I'd be grateful.

Happy to discuss any matters arising.

Regards

Douglas
Douglas Ross QC Ampersand Advocates

phone: [REDACTED]
web: www.ampersandadvocates.com

Clerk: [Alan Moffat](#)

Deputy clerks: [Jennifer Dunn](#), [Sheena Hume](#), [Shawn McArthur](#) & [Kathryn Ferguson](#)



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From: [REDACTED] [@gov.scot](#)>

Sent: 27 November 2020 17:52

To: Douglas Ross <douglas.ross@advocates.org.uk>

Subject: RE: Correspondence- for comment

Hi Douglas,

Many thanks, I can confirm that there have been no further developments on this since the 24th November and that it would be really helpful to have comments early next week.

Best wishes,

[REDACTED]

From: Douglas Ross <douglas.ross@advocates.org.uk>

Sent: 27 November 2020 16:18

To: [REDACTED] [@gov.scot](#)>

Subject: RE: Correspondence- for comment

[REDACTED]

No apology required.

Can I just check that, now that the Lockerbie appeal is over, you would still like me to provide comments and that there have been no developments since your e-mail of 24 November?

If so, I will try to provide comments in the early part of next week.

Regards

Douglas

Douglas Ross QC Ampersand Advocates

phone: [REDACTED]
web: www.ampersandadvocates.com

Clerk: [Alan Moffat](#)

Deputy clerks: [Jennifer Dunn](#), [Sheena Hume](#), [Shawn McArthur](#) & [Kathryn Ferguson](#)



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From: [REDACTED] <[REDACTED]@gov.scot>
Sent: 25 November 2020 13:53
To: Douglas Ross <douglas.ross@advocates.org.uk>
Subject: RE: Correspondence- for comment

Hi Douglas,

Thanks for letting me know, and apologies as I should have remembered that you had other commitments at the end of November.

I will let Mr Hamilton know.

Best wishes,

[REDACTED]

From: Douglas Ross <douglas.ross@advocates.org.uk>
Sent: 25 November 2020 11:10
To: [REDACTED] <[REDACTED]@gov.scot>
Subject: Re: Correspondence- for comment

Dear [REDACTED]

I'm well thanks but am one of the Crown counsel in the Lockerbie appeal which began yesterday and ends on Friday, so unable to attend to other matters this week.

Assuming the appeal ends on time - which I think it will - I can put this matter to the top of my agenda next week.

Regards

Douglas

Sent from my iPad

On 24 Nov 2020, at 20:44, "[REDACTED]" <[REDACTED]@gov.scot> wrote:

Dear Douglas,

I hope you are well.

[REDACTED]

Happy to discuss.

Best wishes,

[REDACTED]

This e-mail (and any files or other attachments transmitted with it) is intended solely for the attention of the addressee(s). Unauthorised use, disclosure, storage, copying or distribution of any part of this e-mail is not permitted. If you are not the intended recipient please destroy the email, remove any copies from your system and inform the sender immediately by return.

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[REDACTED]

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For more information please visit <http://www.symanteccloud.com>

RE: Ministerial Code Referral- PQs and correspondence for clearance

From: [REDACTED]@gov.scot>
To: Deputy First Minister and Cabinet Secretary for Education and Skills <dfmcse@gov.scot>
Cc: Rogers D (David) (Constitution and Cabinet Director) <david.rogers@gov.scot>, McAllister C (Colin) <colin.mcallister@gov.scot>
Date: Tue, 03 Nov 2020 20:56:14 +0000
Attachments: Mr Hamilton letter- on template.dot (151.04 kB)

Many thanks [REDACTED] I've attached the letter on the correct template.

~

From: [REDACTED]@gov.scot> **On Behalf Of** Deputy First Minister and Cabinet Secretary for Education and Skills
Sent: 03 November 2020 20:37
To: [REDACTED]@gov.scot>; Deputy First Minister and Cabinet Secretary for Education and Skills <DFMCSE@gov.scot>
Cc: Rogers D (David) (Constitution and Cabinet Director) <David.Rogers@gov.scot>; McAllister C (Colin) <Colin.McAllister@gov.scot>
Subject: RE: Ministerial Code Referral- PQs and correspondence for clearance

~

Hi [REDACTED]

~

Thank you for sending on, I have attached the correct letter template as you have requested.

~

Thanks

[REDACTED]

~

[REDACTED] Deputy Private Secretary to John Swinney MSP | Deputy First Minister of Scotland and Cabinet Secretary for Education & Skills | Scottish Government | St Andrew's House | Edinburgh | EH1 3DG | Tel: [REDACTED] | E: DFMCSE@gov.scot

~

~

~

From: [REDACTED]@gov.scot>
Sent: 03 November 2020 20:34
To: Deputy First Minister and Cabinet Secretary for Education and Skills <DFMCSE@gov.scot>
Cc: Rogers D (David) (Constitution and Cabinet Director) <David.Rogers@gov.scot>; McAllister C (Colin) <Colin.McAllister@gov.scot>
Subject: Ministerial Code Referral- PQs and correspondence for clearance

~

Hi [REDACTED]

~

Slightly earlier than discussed, please see attached submission on the Ministerial Code Referral. I will also send the PQs referred to in the submission up via the PQ system.

~

At the moment the letter isn't in the correct letter template as I had trouble locating a word version of it - if you were ok to send the correct template over to me I will sort that out.

~

Happy to discuss.

~

Best wishes,

~

A solid black rectangular box used to redact a signature.

Leas Phrìomh Mhinistear agus Rùnaire a' Chaibineit
airson Foghlam agus Sgilean
Deputy First Minister and Cabinet Secretary for
Education and Skills



Scottish Government
Riaghaltas na h-Alba
gov.scot

John Swinney BPA/MSP

F/T: [REDACTED]

E: dfmcse@gov.scot

James Hamilton

Advisor on the Ministerial Code

By email to [REDACTED]@[REDACTED]. [REDACTED]

5 November 2020

Dear Mr Hamilton

SCOTTISH MINISTERIAL CODE: REFERRAL

I am writing to you in connection with the work you are doing on the First Minister's self-referral under the Minister Code.

As you will be aware, the First Minister made the following remarks at First Ministers Questions on 29 October in response to a question from Oliver Mundell.

Oliver Mundell (Dumfriesshire) (Con):

Will the First Minister agree to expand the ministerial code investigation to include her statements to Parliament and her actions on the legal advice regarding the judicial review into Alex Salmond's alleged behaviour?

The First Minister (Nicola Sturgeon):

My view right now is that James Hamilton, who is the adviser undertaking the investigation into the ministerial code, is not restricted at all in the issues that he can look at. If he thinks that there are any issues that engage the ministerial code or could in any way constitute a breach of the ministerial code, my view is that he is free to look at them. If he considers that that requires any change to his official remit, I am

Tha Ministearan na h-Alba, an luchd-comhairleachaidh sònraichte agus an Rùnaire Maireannach fo chumhachan Achd Coiteachaidh (Alba) 2016. Faicibh www.lobbying.scot

Scottish Ministers, special advisers and the Permanent Secretary are covered by the terms of the Lobbying (Scotland) Act 2016. See www.lobbying.scot

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sure that he is perfectly able to say that. However, for the record and to be clear, I do not consider his remit to be limited to just one aspect of the ministerial code.

The Scottish Government has also been asked a number of Parliamentary questions by Alex Cole-Hamilton about the remit of the Code Referral.

I plan to answer the Parliamentary Questions as follows.

Parliament was advised on 3 August 2020 about the terms of the remit for the Ministerial Code referral in PQ answer S5W 31054. The decision to proceed with a referral and the setting of its terms are consistent with the provisions set out in the Ministerial Code and have been agreed with the Independent Adviser. The terms of the remit address the concerns that have been raised about the First Minister's compliance with specific aspects of the Code in relation to certain meetings and other contacts, as described in the remit. As indicated by the First Minister at First Minister's Questions on 29 October, in delivering the remit the Independent Adviser is not constrained in taking evidence and reporting on other aspects of the Ministerial Code that he deems to be relevant.

This answer makes clear that, in the delivery of your remit, you can consider any relevant evidence on other aspects of the Ministerial Code. I hope you find this information helpful.

Please let me know if it would be helpful to discuss this further

Yours sincerely

«Signature»

JOHN SWINNEY

Tha Ministearan na h-Alba, an luchd-comhairleachaidh sònraichte agus an Rùnaire Maireannach fo chumhachan Achd Coiteachaidh (Alba) 2016. Faicibh www.lobbying.scot

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RE: Ministerial Code Referral- PQs and correspondence for clearance

From: Deputy First Minister and Cabinet Secretary for Education and Skills
<dfmcse@gov.scot>
To: [REDACTED]@gov.scot>, Deputy First Minister and Cabinet
Secretary for Education and Skills <dfmcse@gov.scot>
Cc: Rogers D (David) (Constitution and Cabinet Director) <david.rogers@gov.scot>,
McAllister C (Colin) <colin.mcallister@gov.scot>
Date: Tue, 03 Nov 2020 20:37:17 +0000
Attachments: SG - Gaelic - Deputy First Minister and Cabinet Secretary for Education and
Skills.dot (148.48 kB)

Hi [REDACTED]

~

Thank you for sending on, I have attached the correct letter template as you have requested.

~

Thanks

[REDACTED]

~

[REDACTED] Deputy Private Secretary to John Swinney MSP | Deputy First Minister of Scotland
and Cabinet Secretary for Education & Skills | Scottish Government | St Andrew's House |
Edinburgh | EH1 3DG | Tel: [REDACTED] | E: DFMCSE@gov.scot

~

~

~

From: [REDACTED]@gov.scot>

Sent: 03 November 2020 20:34

To: Deputy First Minister and Cabinet Secretary for Education and Skills <DFMCSE@gov.scot>

Cc: Rogers D (David) (Constitution and Cabinet Director) <David.Rogers@gov.scot>; McAllister C
(Colin) <Colin.McAllister@gov.scot>

Subject: Ministerial Code Referral- PQs and correspondence for clearance

~

Hi [REDACTED]

~

Slightly earlier than discussed, please see attached submission on the Ministerial
Code Referral. I will also send the PQs referred to in the submission up via the
PQ system.

~

At the moment the letter isn't in the correct letter template as I had trouble
locating a word version of it - if you were ok to send the correct template over to
me I will sort that out.

~

Happy to discuss.

~

Best wishes,

~

[REDACTED]

Leas Phrìomh Mhinistear agus Rùnaire a' Chaibineit
airson Foghlam agus Sgilean
Deputy First Minister and Cabinet Secretary for
Education and Skills



Scottish Government
Riaghaltas na h-Alba
gov.scot

John Swinney BPA/MSP

E: dfmcse@gov.scot

«Name»

«Organisation»

«Address1»

«Address2»

«Address3»

«Address4»

«Address5»

«Address6»

«Address7»

Your ref:

«Yourref»

Our ref:

«Ourref»

«Date»

«TextofLetter»

«Signature»

JOHN SWINNEY

Tha Ministearan na h-Alba, an luchd-comhairleachaidh sònraichte agus an Rùnaire
Maireannach fo chumhachan Achd Coiteachaidh (Alba) 2016. Faicibh www.lobbying.scot

Scottish Ministers, special advisers and the Permanent Secretary are covered
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RE: iFIX - S490662

From: [REDACTED]@gov.scot>
To: [REDACTED]@gov.scot>
Date: Thu, 03 Dec 2020 11:11:19 +0000

Hi [REDACTED]

Great we will get that sent out for you.

[REDACTED]

[REDACTED]

People Advice and Wellbeing Support Officer
E1 Spur | Saughton House | Broomhouse Drive | Edinburgh | EH11 3XD
[REDACTED]

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Take control of your health and wellbeing with the Scottish Government Collaborative Partners Wellbeing Zone.

<https://sg-help.wellbeingzone.co.uk/>

Set realistic goals and track your progress. Follow your own personal fitness programmes. Take a wellbeing assessment and review your score.

The organisation code is SG.

From: [REDACTED]
Sent: 02 December 2020 10:57
To: [REDACTED]
Subject: RE: iFIX - S490662

Hi [REDACTED]

Many thanks. Please see attached PDF letter, and accompanying document.

Best wishes,

[REDACTED]

From: [REDACTED]@gov.scot>
Sent: 02 December 2020 09:07
To: [REDACTED]@gov.scot>
Subject: RE: iFIX - S490662

Hi [REDACTED]

We can send it for you that's no problem. Can you please send me a PDF copy of the letter?

Thanks,

[REDACTED]

[REDACTED]

People Advice and Wellbeing Support Officer

E1 Spur | Saughton House | Broomhouse Drive | Edinburgh | EH11 3XD
[REDACTED]

Supporting the People Strategy by [Improving Online Guidance](#) - HR Help can help if you can't find what you need on saltire - [REDACTED]

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<https://sg-help.wellbeingzone.co.uk/>

Set realistic goals and track your progress. Follow your own personal fitness programmes. Take a wellbeing assessment and review your score.

The organisation code is SG.

From: [REDACTED] <[REDACTED]@gov.scot>
Sent: 26 November 2020 12:00
To: [REDACTED] <[REDACTED]@gov.scot>
Subject: RE: iFIX - S490662

Hi [REDACTED]

Sending on a letter to the address that you have on file for [REDACTED] would be perfect, I don't think there is anything else I would be looking for.

Best wishes,

[REDACTED]

From: [REDACTED] <[REDACTED]@gov.scot>
Sent: 26 November 2020 09:37
To: [REDACTED] <[REDACTED]@gov.scot>
Subject: RE: iFIX - S490662

Hi [REDACTED]

Thank you for your email.

Can I ask what you would therefore like HR to do? For example, send on the letter to [REDACTED] home address or is there something more?

Thanks,

[REDACTED]

[REDACTED]
[REDACTED]
People Advice and Wellbeing Support Officer
E1 Spur | Saughton House | Broomhouse Drive | Edinburgh | EH11 3XD
T: [REDACTED]

Supporting the People Strategy by [Improving Online Guidance](#) - HR Help can help if you can't find what you need on saltire - [REDACTED]

Take control of your health and wellbeing with the Scottish Government Collaborative Partners Wellbeing Zone.

<https://sg-help.wellbeingzone.co.uk/>

Set realistic goals and track your progress. Follow your own personal fitness programmes. Take a wellbeing assessment and review your score.

The organisation code is SG.

From: [REDACTED] [REDACTED] [REDACTED]@gov.scot>
Sent: 25 November 2020 14:37
To: [REDACTED] [REDACTED] [REDACTED]@gov.scot>
Subject: RE: iFIX - S490662

Hi [REDACTED]

No problem at all.

I am currently acting as secretariat for James Hamilton, independent advisor, who is leading work on the First Minister's self-referral under the Scottish Ministerial Code, which was announced on 13 January 2019 and resumed in August 2020.

Mr Hamilton is a former Director of Public Prosecutions in Ireland and has been an independent adviser since January 2013.

The remit for the referral is to:

1. Review any relevant documentation relating to the meetings and discussions listed above.
2. Interview any Minister or official of the Scottish Government, including Special Advisers, who may have any knowledge of the facts and content of the meetings and discussions, to assess whether the Ministerial Code is engaged and, if so, whether the terms of the Code have been complied with.
3. Interview any relevant person outwith the Scottish Government, including the former First Minister, Alex Salmond, who may have information relating to the facts and content of the meetings and discussions.
4. Determine if there is any evidence that the First Minister attempted to use information discussed during those meetings and discussions to influence the conduct of the investigation being undertaken by the Permanent Secretary into allegations made against Mr Salmond under the Procedure.
5. Provide the Deputy First Minister with a report setting out the findings and conclusions with regard to:
 - i. whether the Ministerial Code is engaged regarding the meetings and discussions;
 - ii. whether there has been any breach of the Code and the nature of any such breach; and
 - iii. if a breach has occurred, advice on the appropriate remedy or sanction.
6. The Independent Adviser is further invited to consider and offer views on whether the Ministerial Code might need revision to reflect the terms of the Procedure and the strict limitations it places on the involvement of the First Minister in cases which fall to be considered under the Procedure.

As part of this work, Mr Hamilton would like to seek a written submission from a former Civil Servant, [REDACTED] [REDACTED], who previously worked in the First Minister's private office. I therefore wondered if this was something that HR would be able to facilitate? I have a draft letter prepared.

Happy to discuss.

Best wishes,

[REDACTED]

From: [REDACTED] <[REDACTED]@gov.scot>
Sent: 25 November 2020 11:55
To: [REDACTED] <[REDACTED]@gov.scot>
Subject: RE: iFIX - S490662

Hi [REDACTED]

It's no problem. Can you please provide me with slightly more information?

Thanks,

[REDACTED]

[REDACTED]

People Advice and Wellbeing Support Officer
E1 Spur | Saughton House | Broomhouse Drive | Edinburgh | EH11 3XD

[REDACTED]

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The organisation code is SG.

From: [REDACTED] <[REDACTED]@gov.scot>
Sent: 24 November 2020 16:29
To: [REDACTED] <[REDACTED]@gov.scot>
Subject: RE: iFIX - S490662

Hi [REDACTED]

Apologies for the delay in getting back to you, I've been out of the office most of the day for a medical appointment.

I can explain a bit more about what I'm hoping to do, but the short summary is that I would like to send an item of correspondence to a former civil servant, and was hoping that your team might be able to facilitate that for me.

Happy to discuss.

Best wishes,

[REDACTED]

From: [REDACTED] <[REDACTED]@gov.scot>
Sent: 24 November 2020 08:44

To: [REDACTED] [REDACTED]@gov.scot>
Subject: iFIX - S490662

Hi [REDACTED]

I have received your ifix call reference S490662, how can I help?

Many thanks,

[REDACTED]

[REDACTED] [REDACTED]

People Advice and Wellbeing Support Officer
E1 Spur | Saughton House | Broomhouse Drive | Edinburgh | EH11 3XD

[REDACTED]

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The organisation code is SG.

From: David Clegg <[REDACTED]>
Sent: 03 December 2020 22:47
To: [REDACTED]@gov.scot>
Subject: FAO James Hamilton

RE: SCOTTISH MINISTERIAL CODE: FIRST MINISTER'S SELF-REFERRAL

Mr Hamilton,

Apologies for the delay in responding. I did not receive your email and, as our entire organisation is currently home working, only received the paper copy of your inquiry today.

I can confirm that I contacted Geoff Aberdein on January 14, 2019 to ascertain if he was the "intermediary" who had set up the meeting between Nicola Sturgeon and Alex Salmond on April 2, 2018, at the First Minister's home.

He confirmed this was the case and subsequently sent me an email with more details. [REDACTED]

[REDACTED]

I have nothing further of note to add about my interactions with Mr Aberdein that would be relevant to your inquiry. [REDACTED]

In terms of the remit of your inquiry, the only other observation I would make is that during my extensive investigations into these matters in January 2019 nobody I spoke to referred to the meeting between Ms Sturgeon and Mr Aberdein on March 29, 2018. The first I learnt of this meeting was during Mr Aberdein's testimony in the criminal trial of Mr Salmond.

Sorry I can't be of more help. If you require any further information from me please do not hesitate to get in touch via this email address.

Yours sincerely,

David Clegg

David Clegg
Editor
The Courier

**DC Thomson & Co
Ltd**
2 Albert Square
Dundee
DD1 1DD

Tel: [REDACTED]
Mob: [REDACTED]
www.thecourier.co.uk

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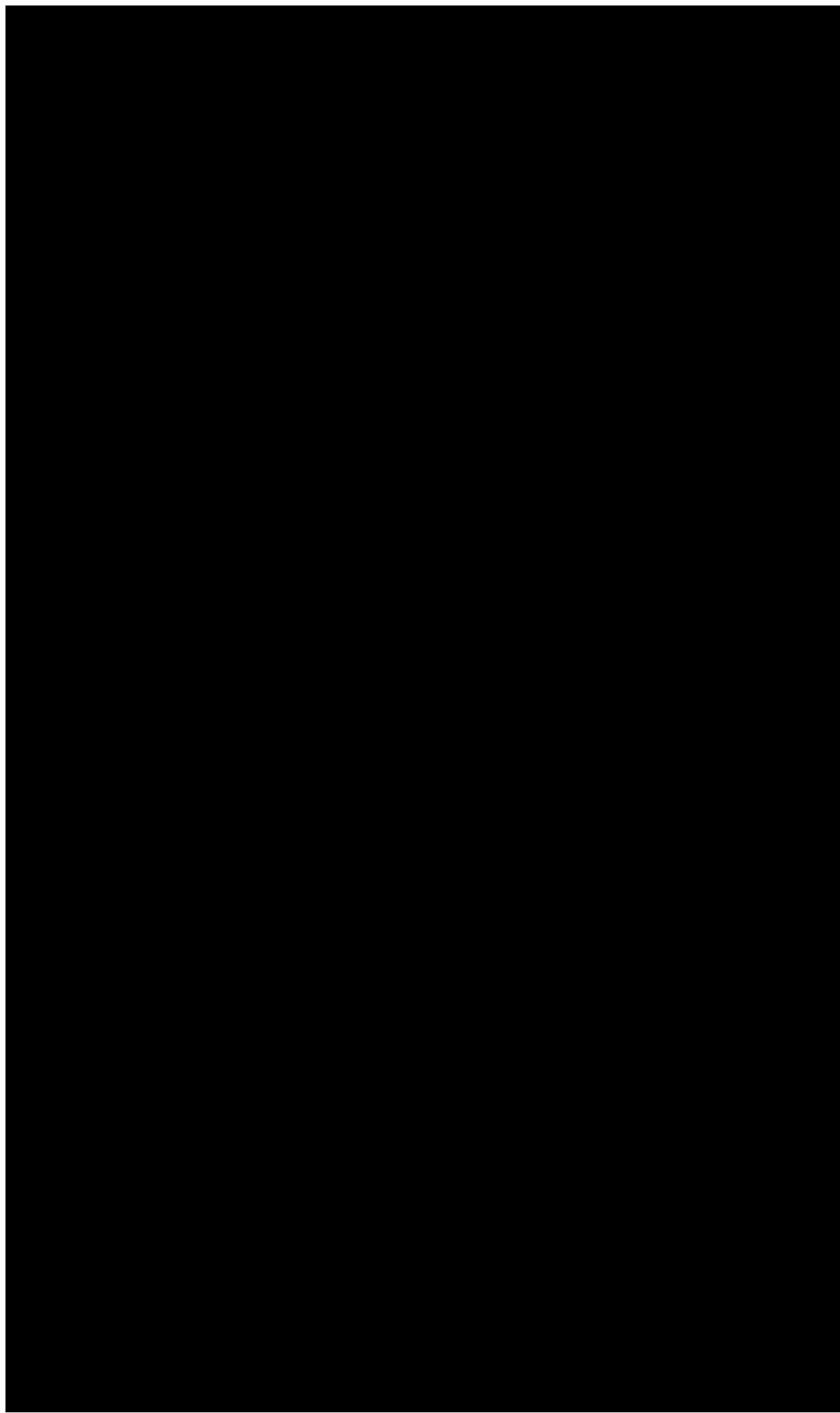
[REDACTED]

[REDACTED]

[REDACTED]



[REDACTED]





From: [REDACTED] [REDACTED]@gov.scot> **On Behalf Of** Deputy First Minister and Cabinet Secretary for Education and Skills
Sent: 04 November 2020 10:26
To: [REDACTED]@gov.scot>; Deputy First Minister and Cabinet Secretary for Education and Skills <DFMCSE@gov.scot>
Cc: Rogers D (David) (Constitution and Cabinet Director) <David.Rogers@gov.scot>; McAllister C (Colin) <Colin.McAllister@gov.scot>
Subject: RE: Ministerial Code Referral- PQs and correspondence for clearance

Hi [REDACTED]

DFM has cleared the letter and PQs. He asked that the letter be issued today (attached) and that the PQs go on Friday.

Thanks
[REDACTED]

[REDACTED] | Deputy Private Secretary to John Swinney MSP | Deputy First Minister of Scotland and Cabinet Secretary for Education & Skills | Scottish Government | St Andrew's House | Edinburgh | EH1 3DG [REDACTED] | E: DFMCSE@gov.scot

From: [REDACTED]@gov.scot>
Sent: 03 November 2020 20:56
To: Deputy First Minister and Cabinet Secretary for Education and Skills <DFMCSE@gov.scot>
Cc: Rogers D (David) (Constitution and Cabinet Director) <David.Rogers@gov.scot>; McAllister C (Colin) <Colin.McAllister@gov.scot>
Subject: RE: Ministerial Code Referral- PQs and correspondence for clearance

Many thanks [REDACTED] I've attached the letter on the correct template.

From: [REDACTED]@gov.scot> **On Behalf Of** Deputy First Minister and Cabinet Secretary for Education and Skills
Sent: 03 November 2020 20:37
To: [REDACTED]@gov.scot>; Deputy First Minister and Cabinet Secretary for Education and Skills <DFMCSE@gov.scot>
Cc: Rogers D (David) (Constitution and Cabinet Director) <David.Rogers@gov.scot>; McAllister C (Colin) <Colin.McAllister@gov.scot>
Subject: RE: Ministerial Code Referral- PQs and correspondence for clearance

Hi [REDACTED]

Thank you for sending on, I have attached the correct letter template as you have requested.

Thanks
[REDACTED]

[REDACTED] | Deputy Private Secretary to John Swinney MSP | Deputy First Minister of Scotland and Cabinet Secretary for Education & Skills | Scottish Government | St Andrew's House | Edinburgh | EH1 3DG | Tel: [REDACTED] | E: DFMCSE@gov.scot

From: [REDACTED] <[\[REDACTED\]@gov.scot](mailto:[REDACTED]@gov.scot)>
Sent: 03 November 2020 20:34
To: Deputy First Minister and Cabinet Secretary for Education and Skills <DFMCSE@gov.scot>
Cc: Rogers D (David) (Constitution and Cabinet Director) <David.Rogers@gov.scot>; McAllister C (Colin) <Colin.McAllister@gov.scot>
Subject: Ministerial Code Referral- PQs and correspondence for clearance

Hi [REDACTED],

Slightly earlier than discussed, please see attached submission on the Ministerial Code Referral. I will also send the PQs referred to in the submission up via the PQ system.

At the moment the letter isn't in the correct letter template as I had trouble locating a word version of it - if you were ok to send the correct template over to me I will sort that out.

Happy to discuss.

Best wishes,

[REDACTED]

Dear Mr Hamilton,

Please find attached a letter from the Deputy First Minister.

Many Thanks,

[REDACTED]

[REDACTED] | Deputy Private Secretary to John Swinney MSP | Deputy First Minister of Scotland and Cabinet Secretary for Education & Skills | Scottish Government | St Andrew's House | Edinburgh | EH1 3DG [REDACTED] | E: DFMCSE@gov.scot



John Swinney BPA/MSP

F/T: [REDACTED]

E: dfmcse@gov.scot

James Hamilton

Advisor on the Ministerial Code

By email to [REDACTED]

1. 04 November 2020

Dear Mr Hamilton

SCOTTISH MINISTERIAL CODE: REFERRAL

I am writing to you in connection with the work you are doing on the First Minister's self-referral under the Minister Code.

As you will be aware, the First Minister made the following remarks at First Ministers Questions on 29 October in response to a question from Oliver Mundell.

Oliver Mundell (Dumfriesshire) (Con):

Will the First Minister agree to expand the ministerial code investigation to include her statements to Parliament and her actions on the legal advice regarding the judicial review into Alex Salmond's alleged behaviour?

The First Minister (Nicola Sturgeon):

My view right now is that James Hamilton, who is the adviser undertaking the investigation into the ministerial code, is not restricted at all in the issues that he can look at. If he thinks that there are any issues that engage the ministerial code or could in any way constitute a breach of the ministerial code, my view is that he is free to look at them. If he considers that that requires any change to his official remit, I am sure that he is perfectly able to say that. However, for the record and to be clear, I do not consider his remit to be limited to just one aspect of the ministerial code.

2. The Scottish Government has also been asked a number of Parliamentary questions by Alex Cole-Hamilton about the remit of the Code Referral.

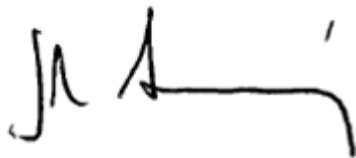
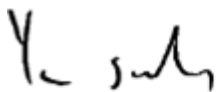
I plan to answer the Parliamentary Questions as follows.

Parliament was advised on 3 August 2020 about the terms of the remit for the Ministerial Code referral in PQ answer S5W 31054. The decision to proceed with a referral and the setting of its terms are consistent with the provisions set out in the Ministerial Code and have been agreed with the Independent Adviser. The terms of the remit address the concerns that have been raised about the First Minister's compliance with specific aspects of the Code in relation to certain meetings and other contacts, as described in the remit. As indicated by the First Minister at First Minister's Questions on 29 October, in delivering the remit the Independent Adviser is not constrained in taking evidence and reporting on other aspects of the Ministerial Code that he deems to be relevant.

3. This answer makes clear that, in the delivery of your remit, you can consider any relevant evidence on other aspects of the Ministerial Code. I hope you find this information helpful.

Please let me know if it would be helpful to

discuss this further Yours sincerely



JOHN SWINNEY

From: Lloyd E (Elizabeth) <Elizabeth.Lloyd@gov.scot>

Sent: 05 October 2020 19:50

To: [REDACTED]@gov.scot>

Subject: RE: Scottish Ministerial Code: First Minister's Self-Referral

[REDACTED]

Thanks for letting me know. It's nearly complete so it will absolutely be with Mr Hamilton this week.

Regards

Liz

Elizabeth Lloyd

Chief of Staff to the First Minister

St Andrew's House

Regent Road

Edinburgh EH1 3DG

Tel: [REDACTED]

Mobile: [REDACTED]

Elizabeth.Lloyd@gov.scot

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From: [REDACTED]
Sent: 05 October 2020 15:21
To: Lloyd E (Elizabeth)
Subject: RE: Scottish Ministerial Code: First Minister's Self-Referral

Dear Liz,

Apologies for the delay in responding- I have also been on annual leave. I have spoken to Mr Hamilton and there is no difficulty with you having a few extra days to respond to his letter.

If you have any other questions please let me know.

Best wishes,

[REDACTED]

From: Lloyd E (Elizabeth) <Elizabeth.Lloyd@gov.scot>
Sent: 23 September 2020 18:37
To: [REDACTED] <[\[REDACTED\]@gov.scot](mailto:[REDACTED]@gov.scot)>
Subject: Scottish Ministerial Code: First Minister's Self-Referral

Dear [REDACTED]

I'm contacting you to confirm I have received James Hamilton's letter of the 8th September.

As I have been on leave this was received on the 21st September.

I'm assuming you are the appropriate contact point.

I note the requests and will endeavour to provide a response by the 6th October, however, I understand I may be asked to appear at the parliamentary committee on that date, and given the need to prepare fully for that, alongside normal responsibilities and those resulting from the pandemic, I may need to request a few extra days (perhaps the following week) to ensure I can properly fulfil all my obligations.

With best wishes

Liz

Elizabeth Lloyd

Chief of Staff to the First Minister

St Andrew's House

Regent Road

Edinburgh EH1 3DG

Tel: [REDACTED]

Mobile: [REDACTED]

Elizabeth.Lloyd@gov.scot

Please note Scottish Ministers, Special advisers and the Permanent Secretary to the Scottish Government are covered by the terms of the Lobbying (Scotland) Act 2016. See www.lobbying.scot for information.

RE: For the attention of Mr James Hamilton

From: [REDACTED]@gov.scot>
To: Somers J (John) <john.somers@gov.scot>
Date: Mon, 05 Oct 2020 16:36:14 +0000

Dear John,

I've spoken to Mr Hamilton and a short extension would be fine. If you have any other questions or queries please let me know.

Best wishes,

[REDACTED]

From: Somers J (John)
Sent: 05 October 2020 13:57
To: [REDACTED]
Subject: For the attention of Mr James Hamilton
Importance: High
Sensitivity: Confidential

[REDACTED]

I'm writing to you on behalf of the First Minister in relation to James Hamilton's letter of 8 September. In Mr Hamilton's letter he asks that if the deadline of Tuesday 6 October 2020 for the First Minister's response poses any difficulty to let him know. On that basis I'm writing to ask for a short extension if it proves necessary.

The Scottish Government is taking decisions over the next 48 hours on possible additional COVID restrictions and the First Minister is fully engaged in that. She will endeavour to get a full response to Mr Hamilton as soon as possible and by the end of the week at the very latest.

Would you be able to ask Mr Hamilton if this would be acceptable to him?

If you want to discuss any of this further please don't hesitate to get in contact.

With best wishes, John

John Somers
Principal Private Secretary to the First Minister
Scottish Government

Work: [REDACTED]
Mob: [REDACTED]



Office of the First Minister of Scotland

FirstMinister.gov.scot

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From: [REDACTED]
Sent: 05 November 2020 11:22
To: James Hamilton [REDACTED]
Subject: FW: Ministerial Code Referral- correspondence for consideration

Hi James,

Please see attached views on the response to Mr Aberdeen. Let me know if you want to make any changes to the draft response as a result of the advice.

I have also had a chance to look at the DFM response and have no substantive comments. In terms of the logistics, I think it would be fine to reply to the email from DFM, or I could send the response on your behalf.

Best wishes,

[REDACTED]

From: Douglas Ross
Sent: 04 November 2020 19:09
To: [REDACTED]
Subject: RE: Ministerial Code Referral- correspondence for consideration

Dear [REDACTED]

1. I am well thanks and trust you are too.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

I would be happy to discuss any matters arising.

Regards

Douglas

Douglas Ross QC Ampersand Advocates

phone: [REDACTED]

web: www.ampersandadvocates.com

Clerk: [Alan Moffat](#)

Deputy clerks: [Jennifer Dunn](#), [Sheena Hume](#), [Shawn McArthur](#) & [Kathryn Ferguson](#)



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From: [REDACTED]@gov.scot <[REDACTED]@gov.scot>

Sent: 04 November 2020 11:04

To: Douglas Ross <douglas.ross@advocates.org.uk>

Subject: Ministerial Code Referral- correspondence for consideration

Dear Douglas,

I hope you are well.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Happy to discuss.

Best wishes,

[REDACTED]

[REDACTED]

Please find attached my submission to the Committee on the Scottish Government's Handling of Harassment Complaints.

I believe the content of this submission sufficiently answers the questions posed to me by Mr Hamilton in his letter of 8 September. However, if Mr Hamilton requires further information, please invite him to write to me and I will endeavour to assist if I can.

I would appreciate confirmation of receipt of this email as well as confirmation that the content of this submission will not be circulated further and used only for the purposes of assisting Mr Hamilton with his enquires under the auspices of the First Minister's self-referral under the Scottish Ministerial Code.

Yours sincerely

Geoff Aberdein

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From: Hynd JS (James)

Sent: 03 June 2020 18:21

To: Deputy First Minister and Cabinet Secretary for Education and Skills

<DFMCSE@gov.scot>

Cc: Hogg KJ (Kenneth) <Kenneth.Hogg@gov.scot>; [REDACTED]

[REDACTED]@gov.scot>; [REDACTED]@gov.scot>; McAllister C

(Colin) <Colin.McAllister@gov.scot>; Nicolson S (Stuart) Special Adviser

<Stuart.Nicolson@gov.scot>

Subject: RE: OFF-SEN: FFM complaints-related workstreams

DFM

I have this afternoon spoken to James Hamilton about the Ministerial Code referral. He remains available to undertake this work.

I agreed with him the following steps:

1. I would contact Dame Elish to advise her that the referral is getting underway and to establish a) whether she is now free from the previous conflict of interest; and b) if she is free, whether she would be available to undertake the referral jointly with Mr Hamilton.
2. I would send him (and Dame Elish if she has a role) the previous remit and background material. He may wish to offer thoughts on this.
3. He and I (and Dame Elish if involved) would then discuss how the conduct of the referral might proceed in light of the current lockdown limitations, noting that it is very likely that key figures whom he might wish to interview will have very restricted availability for some time to come. (As you know, Mr Hamilton [REDACTED] where they are experiencing more or less the same restrictions as we have here.)
4. When the remit and methods of working have been settled, we would provide secretarial support to assist with the location of documents and the setting up of interviews.

I will keep you advised of progress.

James

James Hynd

Head of Cabinet, Parliament and Governance Division

Room 4N:03

St Andrew's House

Edinburgh

Internal [REDACTED]
[REDACTED]

From [REDACTED]@gov.scot> **On Behalf Of** Deputy First Minister and Cabinet Secretary for Education and Skills
Sent: 03 June 2020 10:13
To: Hogg KJ (Kenneth) <Kenneth.Hogg@gov.scot>; Deputy First Minister and Cabinet Secretary for Education and Skills <DFMCSE@gov.scot>
Cc: Lord Advocate <LordAdvocate@gov.scot>; Solicitor General <SolicitorGeneral@gov.scot>; Macniven R (Ruairidh) <Ruairidh.Macniven@gov.scot>; Director Communications, Ministerial Support & Facilities <DirectorCMSF@gov.scot>; Permanent Secretary <PermanentSecretary@gov.scot>; Fraser L (Lesley) <Lesley.Fraser@gov.scot>; DG Organisational Development & Operations <DGODO@gov.scot>; Johnston P (Paul) <Paul.Johnston@gov.scot>; DG Education, Communities & Justice <DGE CJ@gov.scot>; Richards N (Nicola) <Nicola.Richards@gov.scot>; Hynd JS (James) <James.Hynd@gov.scot>; Fowler K (Kenneth) <Kenneth.Fowler@gov.scot>; [REDACTED]@gov.scot>; [REDACTED]@gov.scot>; [REDACTED]@gov.scot>; Troup C (Colin) (Dr) <Colin.Troup@gov.scot>; Legal Secretariat to the Lord Advocate <DLPCEALSLA@gov.scot>; McAllister C (Colin) <Colin.McAllister@gov.scot>
Subject: RE: OFF-SEN: FFM complaints-related workstreams

Hi Kenneth,

The DFM is grateful for this submission and notes its contents.

He would be grateful if steps could now be taken to commence the internal review in the Scottish Government on the remit he previously agreed.

The DFM would also be grateful if steps were taken by the independent reviewer to proceed with the self-referral inquiry by the First Minister under the Ministerial Code.

Mr Swinney would like to stress that these steps must be taken cognisant of the fact that the First Minister, Ministers and senior officials relevant to these inquiries are entirely focused - and will continue to be so for some time to come - on dealing with the COVID pandemic. That task will naturally limit the amount of time that can be allocated to these tasks.

Many thanks

[REDACTED]

[REDACTED] | Interim Private Secretary to John Swinney MSP, Deputy First Minister and Cabinet Secretary for Education and Skills | The Scottish Government | Web: www.gov.scot | Tel: [REDACTED] | Mob: [REDACTED] | Email: DFMCSE@gov.scot

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From: Hogg KJ (Kenneth) <Kenneth.Hogg@gov.scot>

Sent: 27 May 2020 14:11

To: Deputy First Minister and Cabinet Secretary for Education and Skills

<DFMCSE@gov.scot>

Cc: Lord Advocate <LordAdvocate@gov.scot>; Solicitor General

<SolicitorGeneral@gov.scot>; Macniven R (Ruaraidh) <Ruaraidh.Macniven@gov.scot>;

Director Communications, Ministerial Support & Facilities <DirectorCMSF@gov.scot>;

Permanent Secretary <PermanentSecretary@gov.scot>; Fraser L (Lesley)

<Lesley.Fraser@gov.scot>; DG Organisational Development & Operations

<DGODO@gov.scot>; Johnston P (Paul) <Paul.Johnston@gov.scot>; DG Education,

Communities & Justice <DGE CJ@gov.scot>; Richards N (Nicola)

<Nicola.Richards@gov.scot>; Hynd JS (James) <James.Hynd@gov.scot>; Fowler K (Kenneth)

<Kenneth.Fowler@gov.scot>; [REDACTED]@gov.scot>;

[REDACTED]@gov.scot>; [REDACTED]@gov.scot>;

Troup C (Colin) (Dr) <Colin.Troup@gov.scot>; Legal Secretariat to the Lord Advocate

<DLPCEALSLA@gov.scot>; McAllister C (Colin) <Colin.McAllister@gov.scot>

Subject: OFF-SEN: FFM complaints-related workstreams

I attach a submission for DFM, plus 3 other supporting documents.

Kenneth

Kenneth Hogg

Director, Organisational Continuity

[REDACTED]

From: Alex Salmond <[REDACTED]>
Sent: 06 October 2020 22:29
To: [REDACTED] <[REDACTED]@gov.scot>
Cc: Alex Salmond <[REDACTED]>
Subject: Mr James Hamilton

Mr James Hamilton
Independent Adviser on the Scottish Ministerial Code

6th October 2020

Dear Mr Hamilton,

Thank you for your letter of 8th September.

I do indeed have information which will be of assistance to your enquiries and am happy to assist you if I can.

However I would like to accept your offer of clarification on your request and ask first for answers to the following points;

Firstly, I am prepared to represent myself in presenting you with evidence. I am a private individual and simply cannot afford to hire further legal representation as my lawyers are fully occupied dealing with the Scottish Parliamentary Inquiry. Vast sums of public funds have already been expended by Scottish Government officials in legal representation in this process. I am also informed that other witnesses are relying on their political party to finance their legal representation. I will represent myself and am therefore in no position to accept responsibility as to whether my submissions are in line with legal requirements as you suggest in your letter. That will require to be your responsibility and I will be grateful if you could now confirm this.

Secondly, on a related point, the remit drawn by the Deputy First Minister refers to the anonymity orders drawn up by the "court in the criminal proceedings". I would draw your attention to the rather more relevant ruling of Lord Woolman in the civil proceedings of 8th October 2018. This was sought by my counsel and as I recall the Scottish Government were not even represented by counsel at that hearing. Also relevant would be the interlocutor of Lord Pentland of January 8th 2019 after concession of the Judicial Review, where certain Scottish Government documents were reduced by the Court as the product of an unlawful process. For ease of reference I have copied you both of these court interlocutors. Please confirm that you shall not be relying on, or accepting into evidence, said unlawful documents as any part of your enquiries.

You may also be aware that my solicitors have been informed by letter from the Crown Office that if they present or even describe to the Parliamentary Committee information gained in disclosure in the criminal proceedings they will be liable to prosecution. I am happy to provide you with this letter if you wish. Please confirm if this threat applies to your enquiry because there are indeed relevant documents under this restriction. However, given that much of this documentation was obtained by Crown search warrant from the Scottish Government it would be open for the Government to supply you with it. Your difficulty is that you do not know what it is and I am currently debarred from informing you.

Thirdly, I understand from the Parliamentary Committee hearings in answer to a question from Ms Jackie Baillie that the civil servant who has been allocated responsibility for leading support for your enquiry is Mr James Hynd. However Mr Hynd was himself deeply involved in the Scottish Government's unlawful complaints procedure. Indeed he claimed under oath at both the Commission which was required as part of the Judicial Review in December 2018 and in front of the Parliamentary Committee last month to be the original author of the policy. I do not dispute Mr Hynd's personal integrity although I note he was forced to write to the Committee to correct an impression he had unwittingly given about me in his evidence. However, please clarify his status and position in your enquiry given his prior involvement in this matter.

Fourthly, the remit given to your investigation by the Deputy First Minister lays a surprising stress on whether she interfered in the Scottish Government investigation. It might even be suspected that this remit has been set up as a straw man to knock down. There is no general bar on Ministers intervening in a civil service process of which I am aware and indeed there are occasions when Ministers are actually required by the code to intervene to correct civil service behaviour.

What I wish to know is whether matters which, by contrast, are specified in the Ministerial code such as the primary responsibility of not misleading Parliament (contrary to 1.3 (c) of the code), such as the failure to act on legal advice suggesting the Government was at risk of behaving unlawful (contrary to 2.30 of the code), and such as the Ministerial failure to ensure civil servants gave truthful information to parliament (contrary to 1.3 (e) of the code) will have at least equal status in your deliberations or are you confined to the political remit which you have been set? If your enquiry has been confined by Ministers then please tell me if you have the authority to expand that remit unilaterally? If not, will you seek the authority of those in the Scottish Government who set the remit to expand it into these, and other, areas?

Finally since the Parliamentary Committee has demanded full transparency and expressed an interest in your deliberations I have copied them into this email.

As I am answering your enquires personally please direct all future correspondence to me directly at [REDACTED]

Yours faithfully

The Rt Hon Alex Salmond

Sent from my iPad

P850/18 Pet: Alex Salmond for J/R

DAC Beachcroft Scotland LLP

Scottish Government

8 January 2019

Lord Pentland

Act: Clancy, Q.C. et D. Hamilton
Advocate

Alt: R. Dunlop, Q.C. et C. O'Neill, Solicitor

The Lord Ordinary, having heard counsel, on the petitioner's motion, of consent, and in terms and in respect of the Joint Minute for parties No. 39 of process,:-

- (i.) finds and declares that the decisions of the first named respondent, viz. Leslie Evans, as set out in:-
 - (a) a Decision Report written by her dated 21 August 2018 entitled "Formal complaints against Former First Minister, Alex Salmond" (production No. 6/2 in the petitioner's First Inventory of Productions); and
 - (b) a letter from her to the petitioner's solicitors dated 22 August 2018 (production No. 6/1 in the petitioner's First Inventory of Productions)are unlawful in respect that they were taken in circumstances which were procedurally unfair and in respect that they were tainted by apparent bias by reason of the extent and effects of the Investigating Officer's involvement with aspects of the matters raised in the formal complaints against the petitioner prior to her appointment as Investigating Officer in respect of each of those complaints;
- (ii.) reduces the decisions of the first named respondent contained in the aforementioned Decision Report dated 21 August 2018 and letter dated 22 August 2018;
- (iii.) refuses the petitioner's opposed motion, made at the bar, for production of the three investigation reports prepared by the Investigating Officer dated 22 February, 18 July and 23 July 2018; thereafter, without production of the aforementioned reports requiring to be satisfied in these circumstances, reduces the aforementioned three investigation reports dated 22 February, 18 July and 23 July 2018;
- (iv.) finds the respondents liable to the petitioner:-
 - (a) in the expenses of the petition and proceedings following on from the order for commission and diligence pronounced in the interlocutor dated 14 December 2018, including the expenses of the open commission, all on an agent and client client paying scale; and
 - (b) except in so far as already dealt with, including as already dealt with in the foregoing expenses order of even date, in the expenses of the petition and proceedings;

remits the account of expenses, when lodged, to the Auditor of Court to tax;

- (v.) allows the undertaking offered on behalf of the respondents to be recorded in the minute of proceedings of even date;
- (vi.) discharges the substantive hearing fixed for Tuesday 15 January 2019 and the ensuing three days;
- (vii.) quoad ultra dismisses the petition and decerns.

8 January 2019

Lord Pentland

The Lord Ordinary decerns against the respondents for payment to the petitioner of the expenses referred to in the foregoing interlocutor, of even date, as the same shall be taxed by the Auditor of Court.

Author: C Richardson

P850/18 Pet: Alex Salmond for J/R

DAC Beachcroft Scotland LLP

8 October 2018

Lord Woolman

The Lord Ordinary, in chambers and in light of the absence of Lord Pentland, having resumed consideration of the interim order granted by Lord Pentland on Thursday 4 October 2018, makes an order in terms of Chapter 102.3(5) of the Rules of Court withholding from the public in these proceedings the names and the designations, past and present, of the complainers referred to in the decision report which is the subject matter of this petition and any other information concerning those complainers which would lead to their identification; orders, in terms of section 11 of the Contempt of Court Act 1981, that no publication by any means, including on social media, of any of the aforementioned information relating to the complainers, be made; further, allows the complainers to be referred to as "Ms A" and "Ms B" respectively in the present proceedings.

From: Hynd JS (James) <James.Hynd@gov.scot>
Sent: 07 July 2020 23:51
To: [REDACTED] <[REDACTED]@gov.scot>
Cc: [REDACTED] <[REDACTED]@gov.scot>
Subject: FW: Ministerial Code - First Minister's Self-Referral

[REDACTED] could you place this into the eRDM folder for me please. thanks

James

James Hynd
Head of Cabinet, Parliament and Governance Division
Room 4N:03
St Andrew's House
Edinburgh
Internal ext [REDACTED]
[REDACTED]

From: Hynd JS (James)
Sent: 07 July 2020 23:50
To: Deputy First Minister and Cabinet Secretary for Education and Skills
<DFMCSE@gov.scot>
Cc: Hogg KJ (Kenneth) <Kenneth.Hogg@gov.scot>; McAllister C (Colin)
<Colin.McAllister@gov.scot>; DG Organisational Development & Operations
<DGODO@gov.scot>
Subject: Ministerial Code - First Minister's Self-Referral

Top copy DFM

3 page minute and 2 page annex.

James

James Hynd
Head of Cabinet, Parliament and Governance Division
Room 4N:03
St Andrew's House
Edinburgh
Internal ext [REDACTED]
[REDACTED]

From: [REDACTED] <[REDACTED]@gov.scot> **On Behalf Of** Deputy First Minister and Cabinet Secretary for Education and Skills
Sent: 05 June 2020 14:06
To: Hynd JS (James) <James.Hynd@gov.scot>; Deputy First Minister and Cabinet Secretary for Education and Skills <DFMCSE@gov.scot>
Cc: Hogg KJ (Kenneth) <Kenneth.Hogg@gov.scot>; [REDACTED] <[REDACTED]@gov.scot>; [REDACTED] <[REDACTED]@gov.scot>; McAllister C (Colin) <Colin.McAllister@gov.scot>; Nicolson S (Stuart) Special Adviser <Stuart.Nicolson@gov.scot>
Subject: RE: OFF-SEN: FFM complaints-related workstreams

Hi James

The DFM has noted.

Thanks

[REDACTED]

[REDACTED]
[REDACTED]

From: Hynd JS (James) <James.Hynd@gov.scot>
Sent: 03 June 2020 18:21
To: Deputy First Minister and Cabinet Secretary for Education and Skills <DFMCSE@gov.scot>
Cc: Hogg KJ (Kenneth) <Kenneth.Hogg@gov.scot>; [REDACTED] <[REDACTED]@gov.scot>; [REDACTED] <[REDACTED]@gov.scot>; McAllister C (Colin) <Colin.McAllister@gov.scot>; Nicolson S (Stuart) Special Adviser <Stuart.Nicolson@gov.scot>
Subject: RE: OFF-SEN: FFM complaints-related workstreams

DFM

I have this afternoon spoken to James Hamilton about the Ministerial Code referral. He remains available to undertake this work.

I agreed with him the following steps:

1. I would contact Dame Elish to advise her that the referral is getting underway and to establish a) whether she is now free from the previous conflict of interest; and b) if she is free, whether she would be available to undertake the referral jointly with Mr Hamilton.

2. I would send him (and Dame Elish if she has a role) the previous remit and background material. He may wish to offer thoughts on this.
3. He and I (and Dame Elish if involved) would then discuss how the conduct of the referral might proceed in light of the current lockdown limitations, noting that it is very likely that key figures whom he might wish to interview will have very restricted availability for some time to come. (As you know, Mr Hamilton [REDACTED] [REDACTED] where they are experiencing more or less the same restrictions as we have here.)
4. When the remit and methods of working have been settled, we would provide secretarial support to assist with the location of documents and the setting up of interviews.

I will keep you advised of progress.

James

James Hynd
Head of Cabinet, Parliament and Governance Division
Room 4N:03
St Andrew's House
Edinburgh
Internal ext [REDACTED]
[REDACTED]

From: [REDACTED] <[REDACTED]@gov.scot> **On Behalf Of** Deputy First Minister and Cabinet Secretary for Education and Skills

Sent: 03 June 2020 10:13

To: Hogg KJ (Kenneth) <Kenneth.Hogg@gov.scot>; Deputy First Minister and Cabinet Secretary for Education and Skills <DFMCSE@gov.scot>

Cc: Lord Advocate <LordAdvocate@gov.scot>; Solicitor General <SolicitorGeneral@gov.scot>; Macniven R (Ruairidh) <Ruairidh.Macniven@gov.scot>;

Director Communications, Ministerial Support & Facilities <DirectorCMSF@gov.scot>;

Permanent Secretary <PermanentSecretary@gov.scot>; Fraser L (Lesley)

<Lesley.Fraser@gov.scot>; DG Organisational Development & Operations

<DGODO@gov.scot>; Johnston P (Paul) <Paul.Johnston@gov.scot>; DG Education,

Communities & Justice <DGEJ@gov.scot>; Richards N (Nicola)

<Nicola.Richards@gov.scot>; Hynd JS (James) <James.Hynd@gov.scot>; [REDACTED]

<[REDACTED]@gov.scot>; [REDACTED] <[REDACTED]@gov.scot>;

[REDACTED] <[REDACTED]@gov.scot>; [REDACTED] <[REDACTED]@gov.scot>;

Troup C (Colin) (Dr) <Colin.Troup@gov.scot>; Legal Secretariat to the Lord Advocate

<DLPCEALSLA@gov.scot>; McAllister C (Colin) <Colin.McAllister@gov.scot>

Subject: RE: OFF-SEN: FFM complaints-related workstreams

Hi Kenneth,

The DFM is grateful for this submission and notes its contents.

He would be grateful if steps could now be taken to commence the internal review in the Scottish Government on the remit he previously agreed.

The DFM would also be grateful if steps were taken by the independent reviewer to proceed with the self-referral inquiry by the First Minister under the Ministerial Code.

Mr Swinney would like to stress that these steps must be taken cognisant of the fact that the First Minister, Ministers and senior officials relevant to these inquiries are entirely focused - and will continue to be so for some time to come - on dealing with the COVID pandemic. That task will naturally limit the amount of time that can be allocated to these tasks.

Many thanks

[REDACTED]

[REDACTED] | Interim Private Secretary to John Swinney MSP, Deputy First Minister and Cabinet Secretary for Education and Skills | The Scottish Government | Web: www.gov.scot
[Tel: [REDACTED] | Mob: [REDACTED] | Email: DFMCSE@gov.scot

All e-mails and attachments sent by a Ministerial Private Office to another official on behalf of a Minister relating to a decision, request or comment made by a Minister, or a note of a Ministerial meeting, must be filed appropriately by the primary recipient. Private Offices do not keep official records of such e-mails or attachments.

Scottish Ministers, Special advisers and the Permanent Secretary are covered by the terms of the Lobbying (Scotland) Act 2016. See www.lobbying.scot

From: Hogg KJ (Kenneth) <Kenneth.Hogg@gov.scot>

Sent: 27 May 2020 14:11

To: Deputy First Minister and Cabinet Secretary for Education and Skills
<DFMCSE@gov.scot>

Cc: Lord Advocate <LordAdvocate@gov.scot>; Solicitor General
<SolicitorGeneral@gov.scot>; Macniven R (Ruairidh) <Ruairidh.Macniven@gov.scot>;
Director Communications, Ministerial Support & Facilities <DirectorCMSF@gov.scot>;
Permanent Secretary <PermanentSecretary@gov.scot>; Fraser L (Lesley)
<Lesley.Fraser@gov.scot>; DG Organisational Development & Operations
<DGODO@gov.scot>; Johnston P (Paul) <Paul.Johnston@gov.scot>; DG Education,
Communities & Justice <DGEJ@gov.scot>; Richards N (Nicola)
<Nicola.Richards@gov.scot>; Hynd JS (James) <James.Hynd@gov.scot>;
<[REDACTED]@gov.scot>; <[REDACTED]@gov.scot>;
<[REDACTED]@gov.scot>; <[REDACTED]@gov.scot>;

Troup C (Colin) (Dr) <Colin.Troup@gov.scot>; Legal Secretariat to the Lord Advocate
<DLPCEALSLA@gov.scot>; McAllister C (Colin) <Colin.McAllister@gov.scot>

Subject: OFF-SEN: FFM complaints-related workstreams

I attach a submission for DFM, plus 3 other supporting documents.

Kenneth

Kenneth Hogg
Director, Organisational Continuity



From: James Hynd
Cabinet Secretariat
7 July 2020

Deputy First Minister

SCOTTISH MINISTERIAL CODE: FIRST MINISTER'S SELF REFERRAL

Purpose

1. To provide further advice on the next steps in the handling of the First Minister's self-referral under the Ministerial Code.

Timing

2. **Urgent.**

Appointment of Independent Adviser

3. As you know from my email of 3 June, I have been in touch with James Hamilton who has confirmed that he remains available to undertake the referral. I have also been in touch with Dame Elish Angiolini to determine if she is free from the commitment¹ which led to her recusing herself last year. Dame Elish has advised me that she will not be free of that commitment until September and would therefore only be available if the start of the referral could be delayed until then.

4. While Mr Hamilton would prefer working jointly with Dame Elish, he will undertake the referral on his own if necessary. In the circumstances, I would suggest that deferring the start of the self-referral until September would not be in the public interest. We also need to be conscious that there is a risk that Dame Elish's commitment could overrun, pushing the start even further back.

5. On that basis, are you content that we proceed on the basis of Mr Hamilton undertaking the referral on his own?

Remit

6. I had been in the process of agreeing the Terms of Reference of the review in January 2019 when the decision was taken to pause matters in light of the commencement of criminal proceedings. I attach at Annex A the remit that had been prepared at that time and shared on a draft basis with Mr Hamilton. In my view, the draft still covers the necessary

¹ Dame Elish is undertaking an independent review of complaints handling, investigations and misconduct issues in relation to policing for the Scottish Government. As this is a remunerated role she considers it would be a conflict of interest to take on the self-referral.

scope in line with the commitments given by the First Minister in her statement to Parliament on 13 January last year.

7. Are you content with the remit as set out at Annex A and for me to put this to Mr Hamilton for his agreement?

8. The First Minister has given a commitment that the remit will be published in due course.

Parliamentary Committee Inquiry

9. A possible confounding and complicating matter is the recent decision by the Committee on the Scottish Government Handling of Harassment Complaints to include the self-referral as part of its inquiry. In its letter of 30 June to the Permanent Secretary the Committee included the following:

Scottish Ministerial Code

The Committee is also now seeking information in relation to the Scottish Ministerial Code and the events that led to the First Minister's self-referral under the Code.

The Committee seeks to establish who knew what and at what point, and to consider the nature of the meetings between the First Minister and Alex Salmond. In particular, the Committee seeks to establish how the distinction was drawn between Government and Party matters. In which case, we wish to obtain details of how meetings were set up involving the First Minister and Alex Salmond and the extent to which the First Minister's private office was involved.

The Committee therefore asks to receive the communication between you and the First Minister during the period of events which led to the First Minister's self-referral together with any communication you may have been copied into or are aware of having taken place in this context. This communication is in whatever form, whether on work or personal devices.

This element of the inquiry will also give general consideration as to whether the Code is fit for purpose; whether it is clear what course of action is required; whether there is too much discretion in its operation; and ultimately whether it protects integrity of public life.

We will be contacting a range of witnesses, including the First Minister, seeking their written views and supporting evidence.

I would be grateful to receive a written statement and accompanying information which addresses these points no later than the end of the summer recess but preferably by the end of July. For clarity, accompanying information can include but is not limited to letters, emails, text messages, WhatsApp messages, social media messages, and records of phone calls.

10. It would appear from its letter that the Committee is a) seeking information that is not yet available and b) possibly duplicating the role and activities we are asking the Independent Adviser to perform. I also believe that the Committee is seeking to make contact with Mr Hamilton, possibly to invite him as a witness.

11. I consider that I am duty bound to make Mr Hamilton aware of the Committee's intentions in case it causes him to reflect on whether he can proceed while there is potentially a parallel process in train which is seeking to establish the same facts and, in all likelihood, interviewing the same individuals.

12. Once I have your agreement to the other points in this minute I will raise this with Mr Hamilton and let you know of his response.

Conclusion

13. Are you content that we proceed on the basis of Mr Hamilton undertaking the referral on his own?

14. Are you also content with the proposed terms of reference at Annex A?

15. You are invited to note the potential complications arising from the Committee's approach, and that I will seek Mr Hamilton's views on that.

James Hynd
Cabinet Secretariat
7 July 2020

Copy to:

Lesley Fraser
Kenneth Hogg
Colin McAllister

Ministerial Code: Remit for Independent Adviser

Background

It has been alleged that the First Minister breached the Scottish Ministerial Code in that she failed to feed back the basic facts of meetings and discussions held with Alex Salmond to her private office as required by sections 4.22 and 4.23 of the Code. The meetings and discussions in question took place on:

- 2 April 2018 - Meeting between Ms Sturgeon and Mr Salmond at Ms Sturgeon's home.
- 23 April 2018 - Telephone conversation between Ms Sturgeon and Mr Salmond.
- 7 June 2018 - Meeting between Ms Sturgeon and Mr Salmond at SNP Conference, Aberdeen.
- 14 July 2018 - Meeting between Ms Sturgeon and Mr Salmond at Ms Sturgeon's home.
- 18 July 2018 - Telephone conversation between Ms Sturgeon and Mr Salmond.

It has been further suggested that, in light of those meetings, the First Minister may have attempted to influence the conduct of the investigation then being undertaken by the Permanent Secretary into allegations made against Mr Salmond under the Procedure for Handling of Harassment Complaints involving Current or Former Ministers ("the Procedure").

Scottish Ministerial Code

The key relevant extracts from the Code are:

1.6. Ministers are personally responsible for deciding how to act and conduct themselves in the light of the Ministerial Code and for justifying their actions to Parliament and the public. The First Minister is, however, the ultimate judge of the standards of behaviour expected of a Minister and of the appropriate consequences of a breach of those standards. Although the First Minister will not expect to comment on every matter which could conceivably be brought to his or her attention, Ministers can only remain in office for so long as they retain the First Minister's confidence.

1.7. Where he or she deems it appropriate, the First Minister may refer matters to the independent advisers on the Ministerial Code to provide him or her with advice on which to base his or her judgement about any action required in respect of Ministerial conduct. The findings of the independent advisers will be published.

Contacts with External Individuals and Organisations, including Outside Interest Groups and Lobbyists

4.22 Ministers meet many people and organisations and consider a wide range of views as part of the formulation of Government policy. Meetings on official business should normally be arranged through Private Offices. A private secretary or official should be present for all discussions relating to Government business. Private Offices should arrange for the basic facts of formal meetings between Ministers and outside interest groups to be recorded, setting out the reasons for the meeting, the names of those attending and the interests represented. A monthly list of engagements carried out by all Ministers is published three months in arrears.

4.23 If Ministers meet external organisations or individuals and find themselves discussing official business without an official present – for example at a party conference, social occasion or on holiday – any significant content (such as substantive issues relating to Government decisions or contracts) should be passed back to their Private Offices as soon as possible after

the event, who should arrange for the basic facts of such meetings to be recorded in accordance with paragraph 4.22 above.

The First Minister has, accordingly, referred the matter for consideration by one or both Independent Advisers for advice on which to base her judgement about any action required in accordance with the Code.

Remit

The remit for the referral is to:

1. Review any relevant documentation relating to the meetings and discussions listed above.
2. Interview any Minister or official of the Scottish Government, including Special Advisers, who may have any knowledge of the facts and content of the meetings and discussions, to assess whether the Ministerial Code is engaged and, if so, whether the terms of the Code have been complied with.
3. Interview any relevant person outwith the Scottish Government, including the former First Minister, Alex Salmond, who may have information relating to the facts and content of the meetings and discussions.
4. Determine if there is any evidence that the First Minister attempted to use information discussed during those meetings and discussions to influence the conduct of the investigation being undertaken by the Permanent Secretary into allegations made against Mr Salmond under the Procedure.
5. Provide the First Minister with a report setting out the findings and conclusions with regard to:
 - i. whether the Ministerial Code is engaged regarding the meetings and discussions;
 - ii. whether there has been any breach of the Code and the nature of any such breach; and
 - iii. if a breach has occurred, advice on the appropriate remedy or sanction.
6. The Independent Adviser is further invited to consider and offer views on whether the Ministerial Code might need revision to reflect the terms of the Procedure and the strict limitations it places on the involvement of the First Minister in cases which fall to be considered under the Procedure.

Timing

The Independent Adviser is invited to commence the investigation and submit a report as soon as possible.

Publication

The terms of this remit and appointment letter will be published.

The final report will be published. If required in order to avoid any risk of impacting on, or prejudicing, the police investigations or any criminal proceedings, a report may be published with any redactions thought necessary by the Independent Advisers. If redactions are required for legal reasons, a full, un-redacted version of the report will be published following the conclusion of any criminal proceedings, including any appeal, reflecting any legal reporting restrictions that are applied.

Payment

Appointment as an Independent Adviser does not attract payment. Reasonable travel and subsistence costs will be paid in line with normal Civil Service rules.

Secretariat

The Scottish Government will provide secretariat support as required.

Scottish Government
January 2019

From: [REDACTED]
Sent: 07 October 2020 11:22
To: James Hamilton [REDACTED]
Subject: Update on responses

Hi James,

Just wanted to send a quick update on responses:

The Permanent Secretary has asked for an extension of a couple of days. Given previous discussions with Liz Lloyd and FM this seemed ok.

No word from Mr Aberdeen- I could contact the c/o address the letter was sent to in order to check it has reached its intended recipient?

Mr Salmond has responded with a series of clarification questions, as set out below, and has copied this to the Parliamentary Committee. I will start to consider the points raised and any complications raised by the fact this was copied to the Committee, and we can discuss in more detail on Friday.

Best wishes,

[REDACTED]

From: Alex Salmond
Sent: 06 October 2020 22:29
To: [REDACTED]
Cc: Alex Salmond
Subject: Mr James Hamilton

Mr James Hamilton
Independent Adviser on the Scottish Ministerial Code

6th October 2020

Dear Mr Hamilton,

Thank you for your letter of 8th September.

I do indeed have information which will be of assistance to your enquiries and am happy to assist you if I can.

However I would like to accept your offer of clarification on your request and ask first for answers to the following points;

Firstly, I am prepared to represent myself in presenting you with evidence. I am a private individual and simply cannot afford to hire further legal representation as my lawyers are fully occupied dealing with the Scottish Parliamentary Inquiry. Vast sums of public funds have already been expended by Scottish Government officials in legal representation in this process. I am also informed that other witnesses are relying on their political party to finance their legal representation. I will represent myself and am therefore in no position to accept responsibility as to whether my submissions are in line with legal requirements as you suggest in your letter. That will require to be your responsibility and I will be grateful if you could now confirm this.

Secondly, on a related point, the remit drawn by the Deputy First Minister refers to the anonymity orders drawn up by the "court in the criminal proceedings". I would draw your attention to the rather more relevant ruling of Lord Woolman in the civil proceedings of 8th October 2018. This was sought by my counsel and as I recall the Scottish Government were not even represented by counsel at that hearing. Also relevant would be the interlocutor of Lord Pentland of January 8th 2019 after concession of the Judicial Review, where certain Scottish Government documents were reduced by the Court as the product of an unlawful process. For ease of reference I have copied you both of these court interlocutors. Please confirm that you shall not be relying on, or accepting into evidence, said unlawful documents as any part of your enquiries.

You may also be aware that my solicitors have been informed by letter from the Crown Office that if they present or even describe to the Parliamentary Committee information gained in disclosure in the criminal proceedings they will be liable to prosecution. I am happy to provide you with this letter if you wish. Please confirm if this threat applies to your enquiry because there are indeed relevant documents under this restriction. However, given that much of this documentation was obtained by Crown search warrant from the Scottish Government it would be open for the Government to supply you with it. Your difficulty is that you do not know what it is and I am currently debarred from informing you.

Thirdly, I understand from the Parliamentary Committee hearings in answer to a question from Ms Jackie Baillie that the civil servant who has been allocated responsibility for leading support for your enquiry is Mr James Hynd. However Mr Hynd was himself deeply involved in the Scottish Government's unlawful complaints procedure. Indeed he claimed under oath at both the Commission which was required as part of the Judicial Review in December 2018 and in front of the Parliamentary Committee last month to be the original author of the policy. I do not dispute Mr Hynd's personal integrity although I note he was forced to write to the Committee to correct an impression he had unwittingly given about me in his evidence. However, please clarify his status and position in your enquiry given his prior involvement in this matter.

Fourthly, the remit given to your investigation by the Deputy First Minister lays a surprising stress on whether she interfered in the Scottish Government investigation. It might even be suspected that this remit has been set up as a straw man to knock down. There is no general bar on Ministers intervening in a civil service process of which I am aware and indeed there are occasions when Ministers are actually required by the code to intervene to correct civil service behaviour.

What I wish to know is whether matters which, by contrast, are specified in the Ministerial code such as the primary responsibility of not misleading Parliament (contrary to 1.3 (c) of the code), such as the failure to act on legal advice suggesting the Government was at risk of behaving unlawful (contrary to 2.30 of the code), and such as the Ministerial failure to ensure civil servants gave truthful information to parliament (contrary to 1.3 (e) of the code) will have at least equal status in your deliberations or are you confined to the political remit which you have been set? If your enquiry has been confined by Ministers then please tell me if you have the authority to expand that remit unilaterally? If not, will you seek the authority of those in the Scottish Government who set the remit to expand it into these, and other, areas?

Finally since the Parliamentary Committee has demanded full transparency and expressed an interest in your deliberations I have copied them into this email.

As I am answering your enquires personally please direct all future correspondence to me directly at [REDACTED]

Yours faithfully

The Rt Hon Alex Salmond

Sent from my iPad

8 January 2019

Lord Pentland

Act: Clancy, Q.C. et D. Hamilton
Advocate

Alt: R. Dunlop, Q.C. et C. O'Neill, Solicitor

The Lord Ordinary, having heard counsel, on the petitioner's motion, of consent, and in terms and in respect of the Joint Minute for parties No. 39 of process,:-

(i.) finds and declares that the decisions of the first named respondent, viz. Leslie Evans, as set out in:-

(a) a Decision Report written by her dated 21 August 2018 entitled "Formal complaints against Former First Minister, Alex Salmond" (production No. 6/2 in the petitioner's First Inventory of Productions); and

(b) a letter from her to the petitioner's solicitors dated 22 August 2018 (production No. 6/1 in the petitioner's First Inventory of Productions)

are unlawful in respect that they were taken in circumstances which were procedurally unfair and in respect that they were tainted by apparent bias by reason of the extent and effects of the Investigating Officer's involvement with aspects of the matters raised in the formal complaints against the petitioner prior to her appointment as Investigating Officer in respect of each of those complaints;

(ii.) reduces the decisions of the first named respondent contained in the aforementioned Decision Report dated 21 August 2018 and letter dated 22 August 2018;

(iii.) refuses the petitioner's opposed motion, made at the bar, for production of the three investigation reports prepared by the Investigating Officer dated 22 February, 18 July and 23 July 2018; thereafter, without production of the aforementioned reports requiring to be satisfied in these circumstances, reduces the aforementioned three investigation reports dated 22 February, 18 July and 23 July 2018;

(iv.) finds the respondents liable to the petitioner:-

(a) in the expenses of the petition and proceedings following on from the order for commission and diligence pronounced in the interlocutor dated 14 December 2018, including the expenses of the open commission, all on an agent and client client paying scale; and

(b) except in so far as already dealt with, including as already dealt with in the foregoing expenses order of even date, in the expenses of the petition and proceedings;

remits the account of expenses, when lodged, to the Auditor of Court to tax;

(v.) allows the undertaking offered on behalf of the respondents to be recorded in the minute of proceedings of even date;

- (vi.) discharges the substantive hearing fixed for Tuesday 15 January 2019 and the ensuing three days;
- (vii.) *quoad ultra* dismisses the petition and decerns.

8 January 2019

Lord Pentland

The Lord Ordinary decerns against the respondents for payment to the petitioner of the expenses referred to in the foregoing interlocutor, of even date, as the same shall be taxed by the Auditor of Court.

Author: C Richardson



8 October 2018

Lord Woolman

The Lord Ordinary, in chambers and in light of the absence of Lord Pentland, having resumed consideration of the interim order granted by Lord Pentland on Thursday 4 October 2018, makes an order in terms of Chapter 102.3(5) of the Rules of Court withholding from the public in these proceedings the names and the designations, past and present, of the complainers referred to in the decision report which is the subject matter of this petition and any other information concerning those complainers which would lead to their identification; orders, in terms of section 11 of the Contempt of Court Act 1981, that no publication by any means, including on social media, of any of the aforementioned information relating to the complainers, be made; further, allows the complainers to be referred to as "Ms A" and "Ms B" respectively in the present proceedings.

From: Bruce A (Andrew) <Andrew.Bruce@gov.scot> **On Behalf Of** Permanent Secretary

Sent: 07 October 2020 19:31

To: [REDACTED]@gov.scot>

Cc: Permanent Secretary <PermanentSecretary@gov.scot>

Subject: RE: Correspondence to Perm Sec - FM Self Referral under Ministerial Code

[REDACTED]

With apologies for the delay, please find attached the Permanent Secretary's response to Mr Hamilton's letter of 8 September.

Thanks

Andy

Andy Bruce
Principal Private Secretary to the Permanent Secretary
Scottish Government

[REDACTED]

andrew.bruce@gov.scot

From: Bruce A (Andrew) **On Behalf Of** Permanent Secretary

Sent: 06 October 2020 17:42

To: [REDACTED]@gov.scot>

Cc: Permanent Secretary <PermanentSecretary@gov.scot>

Subject: RE: Correspondence to Perm Sec - FM Self Referral under Ministerial Code

[REDACTED]

The Permanent Secretary is just finalising her response to Mr Hamilton. However, I'm afraid she will not be in a position to send this today, but will send it by close of play tomorrow.

I hope this is OK and please do pass on her apologies to Mr Hamilton.

Best wishes

Andy

Andy Bruce
Principal Private Secretary to the Permanent Secretary
Scottish Government

[REDACTED]

andrew.bruce@gov.scot

From: [REDACTED]@gov.scot> **On Behalf Of** Permanent Secretary

Sent: 15 September 2020 11:41

To: [REDACTED]@gov.scot>

Cc: Permanent Secretary <PermanentSecretary@gov.scot>

Subject: Correspondence to Perm Sec - FM Self Referral under Ministerial Code

Hello [REDACTED]

I would like to confirm receipt of James Hamilton's letter to the Permanent Secretary, which I note was copied to yourself. The Permanent Secretary will ensure she responds by the deadline set, 6th of October.

Best wishes,

[REDACTED]
Private Secretary to the Permanent Secretary | [REDACTED] |

Scottish Ministers, Special Advisers and the Permanent Secretary are covered by the terms of the Lobbying (Scotland) Act 2016. See www.lobbying.scot



Scottish Government
Riaghaltas na h-Alba
gov.scot



I'm dyslexic.
Thank you for
your consideration.
Celebrate neurodiversity!



Letter from FM to Permanent Secretary

STRICTLY PRIVATE & CONFIDENTIAL

6 June 2018

For the attention of the Permanent Secretary

On Monday 2 April I was informed by Alex Salmond that you were investigating a complaint from within the civil service about his conduct while First Minister and that the complaint relates to alleged conduct of a sexual nature.

It was clear, from what he told me, that the complaint was being investigated under the guidance put in place towards the end of last year as part of the Scottish Government's response to the public discussion around sexual harassment cases, and which contained provisions for the handling of any complaints against former Ministers. I recalled and explained that as First Minister I had no role in this process, and that I would be advised of a complaint against a former Minister only when you have concluded your investigation.

The former First Minister (FFM) contacted me again on Monday 23 April to say that he intended to propose mediation.

I told the FFM on both occasions that it would not be appropriate for me to seek to intervene in the process in any way and I did not do so.

[REDACTED]

After careful consideration, I decided not to inform you of these approaches as I did not want there to be any suggestion that I was seeking to intervene in the process.

However, I have now had a further approach from the FFM and, given its nature and that it represents a potential challenge to the process, I have decided that I should make you aware of it.

The FFM has told me that he considers the process being followed by the Scottish Government to be unlawful, that he has legal advice to the effect that he would be successful in an application for Judicial Review of the process, and that if any finding is made against him, it is his intention to lodge an application for Judicial Review to seek to have the process declared unlawful.

I want to be very clear that my purpose sending this note is not to ask you to cease the investigation or to influence its course in any way – it is to be transparent with you about my knowledge of a potential challenge to the process. You and I have discussed on many occasions the importance of a zero tolerance approach to sexual harassment within the Scottish Government and the importance to building confidence in such an approach of taking such complaints seriously and ensuring proper investigation. I am clear that the seniority, political affiliation or relationship to

me or my government of any person subject to a complaint should have no bearing on how it's handled. To that end, you have my support in taking whatever steps you consider necessary and appropriate to investigate any complaint about inappropriate conduct within the Scottish Government.

It remains my view that it would be inappropriate for us to discuss the substance of the investigation prior to its conclusion. I intend to inform the FFM that I have told you about his approach to me and to advise him again that it would not be appropriate for me to intervene in the process.

Finally, I am also mindful of the public interest considerations that arise when allegations of this nature are made. At this stage, however, it is my view that the interest of ensuring that the conduct of the investigation is fair to all parties and respects the confidentiality of the complainant(s) is the priority.

NICOLA STURGEON

Response from Permanent Secretary to FM

STRICTLY PRIVATE & CONFIDENTIAL

7 JUNE 2018

For the attention of the First Minister

I confirm receipt of your note of 6 June 2018, the terms of which I have noted.

LESLIE EVANS

Permanent Secretary

Note from Permanent Secretary to FM

First Minister

Strictly private and confidential

Your note of 6 June informed me that the former First Minister, Alex Salmond had made you aware that an investigation was being conducted by the civil service into two formal complaints by civil servants about his conduct in office. [Redacted

[Redacted]

[Redacted]

In line with the Procedure, I will report the outcome of the investigation and decisions about the next steps to be taken by the Scottish Government to you once I have informed the complainers and former First Minister of my conclusions.

Leslie Evans

17 August 2018

Permanent Secretary
Leslie Evans

T: [REDACTED]
E: PermanentSecretary@gov.scot

James Hamilton
Independent Adviser on the Scottish Ministerial
Code

c/o [REDACTED]@gov.sco

7 October 2020

Dear Mr Hamilton

Thank you for your letter of 8 September seeking information from me in relation to your consideration of the First Minister's self-referral under the Scottish Ministerial Code.

You asked for a statement of my actions and involvement in the matters covered by your remit. In providing such a statement, I should make clear from the outset that, as a civil servant, all my actions – including those taken in relation to this matter – are undertaken on behalf of Ministers and in keeping with the Civil Service Code.

I was not aware at the time – nor have I been made aware since - of any attempt by the First Minister to bring any influence to bear on the Scottish Governments's investigation of complaints against Mr Salmond under the Procedure for Handling Harassment Complaints against Current or Former Ministers. At all times, my engagement with the First Minister was in keeping with the respective roles set out for the First Minister and Permanent Secretary in the Procedure. Accordingly, I did not inform the First Minister that formal complaints had been made about Mr Salmond when they were received in January 2018. In line with the Procedure, I did inform the First Minister of the outcome of the investigation at a meeting on 22 August 2018 in her capacity as both First Minister and as Leader of the Party which the former Minister in question, Mr Salmond, had represented.

As I have set out in my response to your specific questions below, the First Minister wrote to me on 6 June 2018, following a discussion on 5 June 2018, informing me of contact that she had had with Mr Salmond. I replied to the First Minister on 7 June 2018 to acknowledge receipt of her letter and to note the information it contained. In addition, I also wrote to the First Minister towards the end of the investigation on 17 August 2018 to inform her I was seeking legal advice on next steps. I am providing copies of all this correspondence as appendices to this letter, although one sentence in my letter of 17 August is redacted. You may wish to note that the same correspondence – with the same redactions - has also been provided to the Scottish Parliament's Committee on the Scottish Government Handling of Harassment Complaints and has today been published on its website (albeit with additional Scottish Ministers, special advisers and the Permanent Secretary are covered by the

terms of the Lobbying (Scotland) Act 2016. See www.lobbying.scot St Andrew's House, Regent Road, Edinburgh EH1 3DG www.gov.scot αβχδ ε αβχ α redactions)1. In addition to these exchanges, the only other communication I recall with the First Minister on this matter was a telephone call sometime in mid-July in which she told me that she had met with Mr Salmond on 14 July 2018 and that he had raised the issue of arbitration with her. She made it clear to me again that she had no role in this matter and that I must reach whatever decision I thought appropriate. Accordingly, my communication with the First Minister on this issue was very limited during the period in which the investigation was in progress.

In line with the Procedure, Mr Salmond had a number of opportunities to contribute to the investigation. I address this further in my answers to your specific questions below.

The intentions that lay behind my actions at all times throughout this period were the need to follow the process set out in the Scottish Government's Procedure for Handling Harassment Complaints against Current or Former Ministers, in line with the Civil Service values of integrity, honesty, objectivity and impartiality. This was especially true in carrying out the responsibilities as Deciding Officer assigned to the Permanent Secretary under the Procedure. At no time did I experience any attempt whatsoever by the First Minister – or anyone acting on behalf of the First Minister – to influence how I undertook that role, or the decisions I came to, either in terms of the process followed or the substance of the matter. Indeed, this point is made explicit in the First Minister's letter to me of 6 June 2018:

"I want to be very clear that my purpose sending this note is not to ask you to cease the investigation or to influence its course in any way – it is to be transparent with you about my knowledge of a potential challenge to the process. You and I have discussed on many occasions the importance of a zero tolerance approach to sexual harassment within the Scottish Government and the importance to building confidence in such an approach of taking such complaints seriously and ensuring proper investigation. I am clear that the seniority, political affiliation or relationship to me or my government of any person subject to a complaint should have no bearing on how it's handled. To that end, you have my support in taking whatever steps you consider necessary and appropriate to investigate any complaint about inappropriate conduct within the Scottish Government."

I have set out responses to each of your specific questions below.

1. In her statement to Parliament on 8 January 2019, the First Minister has disclosed five contacts (three meetings and two telephone conversations) with Mr Salmond. When were you first informed of the contacts between the First Minister and Mr Salmond, and any representations to the First Minister, or any civil servant or special advisor, made on behalf of Mr Salmond?

The First Minister first alerted me to her contact with Mr Salmond during my regular post-Cabinet meeting with her on 5 June 2018. The First Minister then wrote to me on the following day – 6 June 2018 – providing details of the contact with Mr Salmond on 2 April and 23 April 2018. The First Minister's letter went on

to say, "I intend to inform the FFM that I have told you about his approach to me and to advise him again that it would not be appropriate for me to intervene in the process." I understood that the First Minister intended to do so ahead of the Scottish National Party Spring Conference that took place later that week from 8-9 June 2018 in Aberdeen.

[REDACTED]

Aside from the subsequent contacts outlined by the First Minister in her statement to Parliament on 8 January 2019 – about which, as she made clear at First Minister's Questions on 10 January 2019², she also told me - I am not aware of any further representations to the First Minister or any special advisor on behalf of Mr Salmond.

In addition, and as I set out in evidence that I gave to the Committee on the Scottish Government Handling of Harassment Complainants on 18 August 2020, I had also been made aware in early November 2017 that Mr Salmond had contacted civil servants about an incident at Edinburgh airport that was being investigated by Sky News. I shared this information with the First Minister, as I made clear to the Committee.

With the exception of the representations made by Mr Salmond as part of the investigation under the Procedure, I am not aware of any further representations to any civil servant on behalf of Mr Salmond in relation to the investigation.

2. What information was provided to you about the contacts and meetings between the First Minister and Mr Salmond, and any representations made on Mr Salmond's behalf

The First Minister's letter of 6 June 2018, following a discussion on 5 June 2018, represents the full extent of the written information that was provided to me about these contacts and meetings. In addition to these exchanges, the only other communication I recall with the First Minister on this matter was a telephone call sometime in mid-July in which she told me that she had met with Mr Salmond on 14 July 2018 and that he had raised the issue of arbitration with her. She made it clear to me again that she had no role in this matter and that I must reach whatever decision I thought appropriate.

3. Did you or any other civil servant or special adviser, provide advice to the First Minister on contacts with or representations received from Mr Salmond? If so, when was this advice provided and what was the content of this advice. Can you please provide me with copies of any notes, memoranda etc., concerning or containing any such advice.

I did not provide any advice to the First Minister on contacts with or representations received from Mr Salmond. As the First Minister made clear in her letter to me on 6 June 2018, "It remains my view that it would be inappropriate for us to discuss the substance of the investigation prior to its conclusion." I am not aware of any other

civil servant or special adviser providing advice to the First Minister on contacts with or representations received from Mr Salmond.

4. How was the investigation into the complaints against Mr Salmond conducted? What procedures were followed and applied? What was the role of the First Minister in relation to the investigation? Was there any involvement from the First Minister, or any other person acting on behalf of the First Minister, in the investigation? Were there any representations received, either directly or indirectly, from Mr Salmond or anyone acting on his behalf?

The questions set out here will be covered in full by the Scottish Government's fourth and final written statement and supporting documents to the Committee on the Scottish Government Handling of Harassment Complaints, which will cover the investigation of complaints. As you may be aware, the Deputy First Minister wrote to the Convener on 31 August 2020 to inform her that the submission of this material has been delayed pending resolution of an objection received by the Scottish Government to the proposed release of the material³.

The Scottish Government is currently taking steps to resolve this situation, which include initiating an application to court. I will ensure a copy of the written statement is sent to you once it has been provided to the Committee.

However, I can confirm now that, in accordance with the Procedure, the First Minister had no role in relation to the investigation. I can also confirm that, again in accordance with the Procedure, Mr Salmond had the opportunity to make representations as part of the investigation, which he did on a number of occasions through his legal representatives.

I hope the information I have provided is helpful. I would be happy to provide any further information you require, either by correspondence or through an interview.
Yours sincerely Leslie Evans Permanent Secretary Appendix A - Letter from First Minister to Permanent Secretary – 6 June 201

FW: Ministerial Code - First Minister's Self-Referral

From: Hynd JS (James) <james.hynd@gov.scot>
To: Rogers D (David) (Constitution and Cabinet Director) <david.rogers@gov.scot>
Date: Fri, 10 Jul 2020 21:00:16 +0000

\~

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James
James Hynd
Head of Cabinet, Parliament and Governance Division
Room 4N:03
St Andrew's House
Edinburgh



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From: Hynd JS (James)
Sent: 10 July 2020 17:51
To: Deputy First Minister and Cabinet Secretary for Education and Skills <DFMCSE@gov.scot>
Cc: Hogg KJ (Kenneth) <Kenneth.Hogg@gov.scot>; McAllister C (Colin) <Colin.McAllister@gov.scot>; DG Organisational Development & Operations <DGODO@gov.scot>
Subject: RE: Ministerial Code - First Minister's Self-Referral

\~

DFM

\~

This is to record that earlier today I spoke to Mr Hamilton about the next steps in the self-referral process and whether the letter he has received from the Parliamentary Committee (link below) might have any implications from his perspective

\~

Mr Hamilton expressed significant misgivings about the approach being taken by the Committee. While he will give the matter further thought, his current sense is that the Committee's approach has the potential to duplicate what he would be seeking to do in the referral process. At this stage, he is not sure that it would be possible or desirable to have parallel processes in train.

\~

He said that he would give the matter further consideration and revert to me next week.

\~

<https://www.parliament.scot/HarassmentComplaintsCommittee/20200707LettertoJamesHamiltonwrittenevidence.pdf>

\~

\~

James

\~

James Hynd
Head of Cabinet, Parliament and Governance Division
Room 4N:03
St Andrew's House

Edinburgh

[REDACTED]

~
~
~

From: [REDACTED] <[REDACTED]@gov.scot> **On Behalf Of** Deputy First Minister and Cabinet Secretary for Education and Skills
Sent: 08 July 2020 07:25
To: Hynd JS (James) <James.Hynd@gov.scot>; Deputy First Minister and Cabinet Secretary for Education and Skills <DFMCSE@gov.scot>
Cc: Hogg KJ (Kenneth) <Kenneth.Hogg@gov.scot>; McAllister C (Colin) <Colin.McAllister@gov.scot>; DG Organisational Development & Operations <DGODO@gov.scot>
Subject: RE: Ministerial Code - First Minister's Self-Referral

~

Good morning James

~

DFM is content with the recommended approach and asks that these matters be taken forward. DFM is separately addressing the issues put to him by Lesley Fraser raised by the Committee Inquiry.

~

Many thanks

~

[REDACTED]

~

[REDACTED]

DPS to DFM

[REDACTED]

~

From: Hynd JS (James) <James.Hynd@gov.scot>
Sent: 07 July 2020 23:50
To: Deputy First Minister and Cabinet Secretary for Education and Skills <DFMCSE@gov.scot>
Cc: Hogg KJ (Kenneth) <Kenneth.Hogg@gov.scot>; McAllister C (Colin) <Colin.McAllister@gov.scot>; DG Organisational Development & Operations <DGODO@gov.scot>
Subject: Ministerial Code - First Minister's Self-Referral

~

Top copy DFM

~

3 page minute and 2 page annex.

~

~

~

James

~

James Hynd
Head of Cabinet, Parliament and Governance Division
Room 4N:03
St Andrew's House
Edinburgh

[REDACTED]

~
~
~

From: [REDACTED] <[REDACTED]@gov.scot> **On Behalf Of** Deputy First Minister and Cabinet Secretary for Education and Skills
Sent: 05 June 2020 14:06
To: Hynd JS (James) <James.Hynd@gov.scot>; Deputy First Minister and Cabinet Secretary for Education and Skills <DFMCSE@gov.scot>
Cc: Hogg KJ (Kenneth) <Kenneth.Hogg@gov.scot>; [REDACTED] <[REDACTED]@gov.scot>; [REDACTED] <[REDACTED]@gov.scot>; McAllister C (Colin) <Colin.McAllister@gov.scot>; Nicolson S (Stuart) Special Adviser <Stuart.Nicolson@gov.scot>
Subject: RE: OFF-SEN: FFM complaints-related workstreams

~
Hi James
~
The DFM has noted.
~
Thanks
~



From: Hynd JS (James) <James.Hynd@gov.scot>
Sent: 03 June 2020 18:21
To: Deputy First Minister and Cabinet Secretary for Education and Skills <DFMCSE@gov.scot>
Cc: Hogg KJ (Kenneth) <Kenneth.Hogg@gov.scot>; [REDACTED] <[REDACTED]@gov.scot>; [REDACTED] <[REDACTED]@gov.scot>; McAllister C (Colin) <Colin.McAllister@gov.scot>; Nicolson S (Stuart) Special Adviser <Stuart.Nicolson@gov.scot>
Subject: RE: OFF-SEN: FFM complaints-related workstreams

~
DFM
~
I have this afternoon spoken to James Hamilton about the Ministerial Code referral. He remains available to undertake this work.
~

I agreed with him the following steps:

- ~
- 1.~ I would contact Dame Elish to advise her that the referral is getting underway and to establish a) whether she is now free from the previous conflict of interest; and b) if she is free, whether she would be available to undertake the referral jointly with Mr Hamilton.
 - 2.~ I would send him (and Dame Elish if she has a role) the previous remit and background material. He may wish to offer thoughts on this.
 - 3.~ He and I (and Dame Elish if involved) would then discuss how the conduct of the referral might proceed in light of the current lockdown limitations, noting that it is very likely that key figures whom he might wish to interview will have very restricted availability for some time to come. (As you know, Mr Hamilton [REDACTED] where they are experiencing more or less the same restrictions as we have here.)
 - 4.~ When the remit and methods of working have been settled, we would provide secretarial support to assist with the location of documents and the setting up of interviews.

~
I will keep you advised of progress.
~

~
James
~
James Hynd
Head of Cabinet, Parliament and Governance Division
Room 4N:03
St Andrew's House
Edinburgh

[REDACTED]

~
~
~

From: [REDACTED] <[REDACTED]@gov.scot> **On Behalf Of** Deputy First Minister and Cabinet Secretary for Education and Skills
Sent: 03 June 2020 10:13
To: Hogg KJ (Kenneth) <Kenneth.Hogg@gov.scot>; Deputy First Minister and Cabinet Secretary for Education and Skills <DFMCSE@gov.scot>
Cc: Lord Advocate <LordAdvocate@gov.scot>; Solicitor General <SolicitorGeneral@gov.scot>; Macniven R (Ruairidh) <Ruairidh.Macniven@gov.scot>; Director Communications, Ministerial Support & Facilities <DirectorCMSF@gov.scot>; Permanent Secretary <PermanentSecretary@gov.scot>; Fraser L (Lesley) <Lesley.Fraser@gov.scot>; DG Organisational Development & Operations <DGODO@gov.scot>; Johnston P (Paul) <Paul.Johnston@gov.scot>; DG Education, Communities & Justice <DGECJ@gov.scot>; Richards N (Nicola) <Nicola.Richards@gov.scot>; Hynd JS (James) <James.Hynd@gov.scot>; [REDACTED] <[REDACTED]@gov.scot>; [REDACTED] <[REDACTED]@gov.scot>; Troup C (Colin) (Dr) <Colin.Troup@gov.scot>; Legal Secretariat to the Lord Advocate <DLPCEALSLA@gov.scot>; McAllister C (Colin) <Colin.McAllister@gov.scot>
Subject: RE: OFF-SEN: FFM complaints-related workstreams

~
Hi Kenneth,
~
The DFM is grateful for this submission and notes its contents.
~
He would be grateful if steps could now be taken to commence the internal review in the Scottish Government on the remit he previously agreed.
~
The DFM would also be grateful if steps were taken by the independent reviewer to proceed with the self-referral inquiry by the First Minister under the Ministerial Code.
~
Mr Swinney would like to stress that these steps must be taken cognisant of the fact that the First Minister, Ministers and senior officials relevant to these inquiries are entirely focused - and will continue to be so for some time to come - on dealing with the COVID pandemic. That task will naturally limit the amount of time that can be allocated to these tasks.
~
Many thanks
~

[REDACTED]

~
All e-mails and attachments sent by a Ministerial Private Office to another official on behalf of a Minister relating to a decision, request or comment made by a Minister, or a note of a Ministerial meeting, must be filed appropriately by the primary recipient. Private Offices do not keep official records of such e-mails or attachments.
~

Scottish Ministers, Special advisers and the Permanent Secretary are covered by the terms of the Lobbying (Scotland) Act 2016. See www.lobbying.scot

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From: Hogg KJ (Kenneth) <Kenneth.Hogg@gov.scot>

Sent: 27 May 2020 14:11

To: Deputy First Minister and Cabinet Secretary for Education and Skills <DFMCSE@gov.scot>

Cc: Lord Advocate <LordAdvocate@gov.scot>; Solicitor General <SolicitorGeneral@gov.scot>;

Macniven R (Ruairidh) <Ruairidh.Macniven@gov.scot>; Director Communications, Ministerial

Support & Facilities <DirectorCMSF@gov.scot>; Permanent Secretary

<PermanentSecretary@gov.scot>; Fraser L (Lesley) <Lesley.Fraser@gov.scot>; DG

Organisational Development & Operations <DGODO@gov.scot>; Johnston P (Paul)

<Paul.Johnston@gov.scot>; DG Education, Communities & Justice <DGE CJ@gov.scot>;

Richards N (Nicola) <Nicola.Richards@gov.scot>; Hynd JS (James) <James.Hynd@gov.scot>;

[REDACTED] <[REDACTED]@gov.scot>; [REDACTED]

<[REDACTED]@gov.scot>; Troup C (Colin) (Dr) <Colin.Troup@gov.scot>; Legal Secretariat to

the Lord Advocate <DLPCEALSLA@gov.scot>; McAllister C (Colin) <Colin.McAllister@gov.scot>

Subject: OFF-SEN: FFM complaints-related workstreams

~

I attach a submission for DFM, plus 3 other supporting documents.

~

Kenneth

~

~

~

Kenneth Hogg

Director, Organisational Continuity

~

[REDACTED]

From: Nicolson S (Stuart) Special Adviser <Stuart.Nicolson@gov.scot>
Sent: 07 December 2020 14:29
To: [REDACTED]@gov.scot>
Subject: RE: Personal- Ministerial Code Referral- Correspondence from James Hamilton
Importance: High

Dear [REDACTED]

Please find below my reply to Mr Hamilton. I'd be grateful if this could be formalised and sent via yourself/SG colleagues in the most appropriate way – I note the requested deadline is tomorrow, so it would be good if this can be issued today by email, with today's date, in addition to any hard copy. Please let me know if there is anything further you need.

Many thanks,

Stuart

Dear Mr Hamilton,

Thank you for your letter of November 25th.

In answer to your specific question, I can confirm that Geoff Aberdein contacted me on January 14th 2019 to make me aware of a comment he intended to issue to a newspaper.

[REDACTED]
[REDACTED]
As a former colleague, and given my role as spokesperson for the First Minister, Mr Aberdein contacted me as a courtesy, given that his comment [REDACTED] were likely to prompt follow-up media queries to the Scottish Government.

With regard to your other question, I do not have any further information I can provide. I was not present at the meeting or meetings between [REDACTED] and Mr Aberdein – nor indeed did I have any knowledge of the fact of such a meeting or meetings at the time such contact took place.

*Yours Sincerely,
Stuart Nicolson*

From: [REDACTED]@gov.scot>
Sent: 25 November 2020 09:21
To: Nicolson S (Stuart) Special Adviser <Stuart.Nicolson@gov.scot>
Subject: Personal- Ministerial Code Referral- Correspondence from James Hamilton

Dear Stuart Nicolson,

Please see attached correspondence from James Hamilton, independent advisor on the Ministerial Code.

In order to ensure that the current Covid measures do not delay this correspondence, it has been sent by email in the first instance. A duplicate hard copy will also be sent by post.

Best wishes,

[REDACTED]

[REDACTED] | Secretariat to the Independent Advisor under the Ministerial Code
| Please contact me on Skype or on [REDACTED]

Ministerial Code - Remit

From: Hynd JS (James) </o=tse/ou=tseexchsite01/cn=recipients/cn=hyndj">
To: "James Hamilton ([REDACTED]@[REDACTED].[REDACTED])" <[REDACTED]@[REDACTED].[REDACTED]>
Cc: "Dame Elish Angiolini" [REDACTED]
Date: Mon, 03 Aug 2020 13:05:59 +0000
Attachments: s5w-31054.docx (20.05 kB)

Dear Mr Hamilton

I am writing to confirm that the Deputy First Minister has now answered a Parliamentary Question which includes the full text of the remit for the First Minister's self-referral under the Code. This will be in the public domain shortly and a copy is attached for your information.

Dame Elish – I am sending this to you for your general awareness and also in case you receive any direct approaches. Please feel free to direct any media approaches to Scottish Government Comms.

With best wishes

James

James Hynd
Head of Cabinet, Parliament and Governance Division
Room 4N:03
St Andrew's House
Edinburgh
[REDACTED]

SCOTTISH PARLIAMENT

WRITTEN ANSWER

3 August 2020

Index Heading: Constitution and External Affairs

Clare Adamson (Motherwell and Wishaw) (Scottish National Party): To ask the Scottish Government whether it will provide an update on progress with the First Minister's self-referral under the Scottish Ministerial Code, which was announced on 13 January 2019.

S5W-31054

John Swinney: In my response to S5W-21344 on 31 January 2019, I advised Parliament that the Ministerial Code referral had to be paused to avoid any risk of prejudice to live criminal proceedings. Since the conclusion of those proceedings, the attention of the Government has been focussed on leading Scotland's response global health emergency. In light of the progress that has been made we are now able to re-commence the referral.

The referral will be led by James Hamilton, who is a standing member of the panel of independent advisers. Mr Hamilton is a former Director of Public Prosecutions in Ireland and has been an independent adviser since January 2013.

Mr Hamilton will now proceed with the referral and report as soon as he is able. The report will be published in line with the terms of the remit.

The remit for the referral is as follows:

Ministerial Code Referral: Remit for Independent Adviser

Background

It has been alleged that the First Minister breached the Scottish Ministerial Code in that she failed to feed back the basic facts of meetings and discussions held with Alex Salmond to her private office as required by sections 4.22 and 4.23 of the Code. The meetings and discussions in question took place on:

- 29 March 2018 – Meeting between Ms Sturgeon and Geoff Aberdein, former Chief of Staff to Mr Salmond, Scottish Parliament
- 2 April 2018 - Meeting between Ms Sturgeon and Mr Salmond at Ms Sturgeon's home.
- 23 April 2018 - Telephone conversation between Ms Sturgeon and Mr Salmond.
- 7 June 2018 - Meeting between Ms Sturgeon and Mr Salmond at SNP Conference, Aberdeen.
- 14 July 2018 - Meeting between Ms Sturgeon and Mr Salmond at Ms Sturgeon's home.
- 18 July 2018 - Telephone conversation between Ms Sturgeon and Mr Salmond.

It has been further suggested that, in light of those meetings, the First Minister may have attempted to influence the conduct of the investigation then being undertaken by the Permanent Secretary into allegations made against Mr Salmond under the Procedure for Handling of Harassment Complaints involving Current or Former Ministers ("the Procedure").

Scottish Ministerial Code

The key relevant extracts from the Code are:

1.6. Ministers are personally responsible for deciding how to act and conduct themselves in the light of the Ministerial Code and for justifying their actions to Parliament and the public. The First Minister is, however, the ultimate judge of the standards of behaviour expected of a Minister and of the appropriate consequences of a breach of those standards. Although the First Minister will not expect to comment on every matter which could conceivably be brought to his or her attention, Ministers can only remain in office for so long as they retain the First Minister's confidence.

1.7. Where he or she deems it appropriate, the First Minister may refer matters to the independent advisers on the Ministerial Code to provide him or her with advice on which to base his or her judgement about any action required in respect of Ministerial conduct. The findings of the independent advisers will be published.

Contacts with External Individuals and Organisations, including Outside Interest Groups and Lobbyists

4.22 Ministers meet many people and organisations and consider a wide range of views as part of the formulation of Government policy. Meetings on official business should normally be arranged through Private Offices. A private secretary or official should be present for all discussions relating to Government business. Private Offices should arrange for the basic facts of formal meetings between Ministers and outside interest groups to be recorded, setting out the reasons for the meeting, the names of those attending and the interests represented. A monthly list of engagements carried out by all Ministers is published three months in arrears.

4.23 If Ministers meet external organisations or individuals and find themselves discussing official business without an official present – for example at a party conference, social occasion or on holiday – any significant content (such as substantive issues relating to Government decisions or contracts) should be passed back to their Private Offices as soon as possible after the event, who should arrange for the basic facts of such meetings to be recorded in accordance with paragraph 4.22 above.

The First Minister has, accordingly, referred the matter for consideration by one or both Independent Advisers for advice on which to base her judgement about any action required in accordance with the Code.

Remit

The remit for the referral is to:

1. Review any relevant documentation relating to the meetings and discussions listed above.
2. Interview any Minister or official of the Scottish Government, including Special Advisers, who may have any knowledge of the facts and content of the meetings and discussions, to assess whether the Ministerial Code is engaged and, if so, whether the terms of the Code have been complied with.
3. Interview any relevant person outwith the Scottish Government, including the former First Minister, Alex Salmond, who may have information relating to the facts and content of the meetings and discussions.
4. Determine if there is any evidence that the First Minister attempted to use information discussed during those meetings and discussions to influence the conduct of the investigation being undertaken by the Permanent Secretary into allegations made against Mr Salmond under the Procedure.
5. Provide the Deputy First Minister with a report setting out the findings and conclusions with regard to:
 - i. whether the Ministerial Code is engaged regarding the meetings and discussions;
 - ii. whether there has been any breach of the Code and the nature of any such breach; and
 - iii. if a breach has occurred, advice on the appropriate remedy or sanction.
6. The Independent Adviser is further invited to consider and offer views on whether the Ministerial Code might need revision to reflect the terms of the Procedure and the strict limitations it places on the involvement of the First Minister in cases which fall to be considered under the Procedure.

Timing

The Independent Adviser is invited to commence the investigation and submit a report as soon as possible.

Publication

The terms of this remit will be published.

The final report will be published. If required, the report will be redacted to remove the risk of any complainer being identified and otherwise to ensure compliance with the terms of the order made by the court in the criminal proceedings.

Payment

Appointment as an Independent Adviser does not attract payment. Reasonable travel and subsistence costs will be paid in line with normal Civil Service rules.

Secretariat

The Scottish Government will provide secretariat support as required.

Note from DFM: Scottish Ministerial Code - First Minister's Self Referral

From: Deputy First Minister and Cabinet Secretary for Education and Skills
<dfmcse@gov.scot>
To: First Minister <firstminister@gov.scot>, Deputy First Minister and Cabinet Secretary
for Education and Skills <dfmcse@gov.scot>
Cc: Permanent Secretary <permanentsecretary@gov.scot>, Fraser L (Lesley)
<lesley.fraser@gov.scot>, Hynd JS (James) <james.hynd@gov.scot>, Hogg KJ
(Kenneth) <kenneth.hogg@gov.scot>
Date: Mon, 03 Aug 2020 11:51:13 +0000
Attachments: Ministerial Code Referral -GIQ Remit July 2020 - DFM Note to FM -Final.docx
(18.79 kB)

FMPO

Please find attached a note from the Deputy First Minister for the attention of the
First Minister.

Many thanks

[REDACTED]
[REDACTED] | Deputy Private Secretary to John Swinney MSP | Deputy First Minister of Scotland
and Cabinet Secretary for Education & Skills | Scottish Government | St Andrew's House |
Edinburgh | EH1 3DG [REDACTED] | E: DFMCSE@gov.scot

*All e-mails and attachments sent by a Ministerial Private Office to any other official on behalf of a Minister relating to a
decision, request or comment made by a Minister, or a note of a Ministerial meeting, must be filed appropriately by the
recipient. Private Offices do not keep official records of such e-mails or attachments.*

*Scottish Ministers, Special advisers and the Permanent Secretary are covered by the terms of the Lobbying (Scotland) Act
2016. See www.lobbying.scot*

First Minister

Copy to: Permanent Secretary
Lesley Fraser
Kenneth Hogg
James Hynd

SCOTTISH MINISTERIAL CODE: FIRST MINISTER'S SELF-REFERRAL

1. You have delegated to me responsibility for taking forward your self-referral under the Ministerial Code.
2. This note is to advise you that the remit for the referral has now been agreed with the independent adviser, James Hamilton.
3. I intend to advise Parliament about the scope of the remit by way of a written Parliamentary answer today, Monday 3 August. The terms of that answer are attached for your information.

JS
3 August 2020

Government Inspired Question and Answer
Monday, 3 August 2020

Clare Adamson [S5W: 31054]:

to ask the Scottish Government for an update on progress with the First Minister's self-referral under the Scottish Ministerial Code which was announced on 13 January 2019.

John Swinney MSP:

In my response to S5W:21344 on 31 January 2019, I advised Parliament that the Ministerial Code referral had to be paused to avoid any risk of prejudice to live criminal proceedings. Since the conclusion of those proceedings, the attention of the Government has been focussed on leading Scotland's response global health emergency. In light of the progress that has been made we are now able to re-commence the referral.

The referral will be led by James Hamilton, who is a standing member of the panel of independent advisers. Mr Hamilton is a former Director of Public Prosecutions in Ireland and has been an independent adviser since January 2013.

Mr Hamilton will now proceed with the referral and report as soon as he is able. The report will be published in line with the terms of the remit.

The remit for the referral is as follows:

Ministerial Code Referral: Remit for Independent Adviser

Background

It has been alleged that the First Minister breached the Scottish Ministerial Code in that she failed to feed back the basic facts of meetings and discussions held with Alex Salmond to her private office as required by sections 4.22 and 4.23 of the Code. The meetings and discussions in question took place on:

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- 14 July 2018 - Meeting between Ms Sturgeon and Mr Salmond at Ms Sturgeon's home.
- 18 July 2018 - Telephone conversation between Ms Sturgeon and Mr Salmond.

It has been further suggested that, in light of those meetings, the First Minister may have attempted to influence the conduct of the investigation then being

undertaken by the Permanent Secretary into allegations made against Mr Salmond under the Procedure for Handling of Harassment Complaints involving Current or Former Ministers ("the Procedure").

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The key relevant extracts from the Code are:

1.6. Ministers are personally responsible for deciding how to act and conduct themselves in the light of the Ministerial Code and for justifying their actions to Parliament and the public. The First Minister is, however, the ultimate judge of the standards of behaviour expected of a Minister and of the appropriate consequences of a breach of those standards. Although the First Minister will not expect to comment on every matter which could conceivably be brought to his or her attention, Ministers can only remain in office for so long as they retain the First Minister's confidence.

1.7. Where he or she deems it appropriate, the First Minister may refer matters to the independent advisers on the Ministerial Code to provide him or her with advice on which to base his or her judgement about any action required in respect of Ministerial conduct. The findings of the independent advisers will be published.

Contacts with External Individuals and Organisations, including Outside Interest Groups and Lobbyists

4.22 Ministers meet many people and organisations and consider a wide range of views as part of the formulation of Government policy. Meetings on official business should normally be arranged through Private Offices. A private secretary or official should be present for all discussions relating to Government business. Private Offices should arrange for the basic facts of formal meetings between Ministers and outside interest groups to be recorded, setting out the reasons for the meeting, the names of those attending and the interests represented. A monthly list of engagements carried out by all Ministers is published three months in arrears.

4.23 If Ministers meet external organisations or individuals and find themselves discussing official business without an official present – for example at a party conference, social occasion or on holiday – any significant content (such as substantive issues relating to Government decisions or contracts) should be passed back to their Private Offices as soon as possible after the event, who should arrange for the basic facts of such meetings to be recorded in accordance with paragraph 4.22 above.

The First Minister has, accordingly, referred the matter for consideration by one or both Independent Advisers for advice on which to base her judgement about any action required in accordance with the Code.

Remit

The remit for the referral is to:

1. Review any relevant documentation relating to the meetings and discussions listed above.

2. Interview any Minister or official of the Scottish Government, including Special Advisers, who may have any knowledge of the facts and content of the meetings and discussions, to assess whether the Ministerial Code is engaged and, if so, whether the terms of the Code have been complied with.
3. Interview any relevant person outwith the Scottish Government, including the former First Minister, Alex Salmond, who may have information relating to the facts and content of the meetings and discussions.
4. Determine if there is any evidence that the First Minister attempted to use information discussed during those meetings and discussions to influence the conduct of the investigation being undertaken by the Permanent Secretary into allegations made against Mr Salmond under the Procedure.
5. Provide the Deputy First Minister with a report setting out the findings and conclusions with regard to:
 - i. whether the Ministerial Code is engaged regarding the meetings and discussions;
 - ii. whether there has been any breach of the Code and the nature of any such breach; and
 - iii. if a breach has occurred, advice on the appropriate remedy or sanction.
6. The Independent Adviser is further invited to consider and offer views on whether the Ministerial Code might need revision to reflect the terms of the Procedure and the strict limitations it places on the involvement of the First Minister in cases which fall to be considered under the Procedure.

Timing

The Independent Adviser is invited to commence the investigation and submit a report as soon as possible.

Publication

The terms of this remit will be published.

The final report will be published. If required, the report will be redacted to remove the risk of any complainer being identified and otherwise to ensure compliance with the terms of the order made by the court in the criminal proceedings.

Payment

Appointment as an Independent Adviser does not attract payment. Reasonable travel and subsistence costs will be paid in line with normal Civil Service rules.

Secretariat

The Scottish Government will provide secretariat support as required.

SCOTTISH GOVERNMENT

RE: Ministerial Code: FM's Self Referral

From: Deputy First Minister and Cabinet Secretary for Education and Skills
<dfmcse@gov.scot>
To: Hynd JS (James) <james.hynd@gov.scot>, Deputy First Minister and Cabinet Secretary for Education and Skills <dfmcse@gov.scot>
Cc: Minister for Parliamentary Business and Veterans <ministerpbv@gov.scot>, DG Organisational Development & Operations <dgodo@gov.scot>, Hogg KJ (Kenneth) <kenneth.hogg@gov.scot>, McAllister C (Colin) <colin.mcallister@gov.scot>, [REDACTED] <[REDACTED]@gov.scot>, [REDACTED] <[REDACTED]@gov.scot>, [REDACTED] <[REDACTED]@gov.scot>, [REDACTED] <[REDACTED]@gov.scot>, Spads Admin <spads_admin@gov.scot>, [REDACTED] <[REDACTED]@gov.scot>, [REDACTED] <[REDACTED]@gov.scot>, [REDACTED] <[REDACTED]@gov.scot>, [REDACTED] <[REDACTED]@gov.scot>, Cabinet Secretariat inbox <cabinetsecretariat3@gov.scot>
Date: Mon, 03 Aug 2020 15:34:47 +0000
Attachments: Letter from the DFM - Ministerial Code: First Minister's Self Referral (392.7 kB)

Hello James

I attach a copy of the letter issued to Committee for your records.

Many thanks

[REDACTED]

[REDACTED]

DPS to DFM

[REDACTED]

From: Hynd JS (James) <James.Hynd@gov.scot>
Sent: 31 July 2020 11:36
To: Deputy First Minister and Cabinet Secretary for Education and Skills <DFMCSE@gov.scot>
Cc: Minister for Parliamentary Business and Veterans <MinisterPBV@gov.scot>; DG Organisational Development & Operations <DGODO@gov.scot>; Hogg KJ (Kenneth) <Kenneth.Hogg@gov.scot>; McAllister C (Colin) <Colin.McAllister@gov.scot>; [REDACTED] <[REDACTED]@gov.scot>; [REDACTED] <[REDACTED]@gov.scot>; [REDACTED] <[REDACTED]@gov.scot>; [REDACTED] <[REDACTED]@gov.scot>; Spads Admin <Spads_Admin@gov.scot>; [REDACTED] <[REDACTED]@gov.scot>; [REDACTED] <[REDACTED]@gov.scot>; [REDACTED] <[REDACTED]@gov.scot>; Cabinet Secretariat inbox <CabinetSecretariat3@gov.scot>
Subject: Ministerial Code: FM's Self Referral

Top copy DFM

2 page minute and attachments

James

James Hynd
 Head of Cabinet, Parliament and Governance Division
 Room 4N:03

St Andrew's House
Edinburgh



Letter from the DFM - Ministerial Code: First Minister's Self Referral

From: [REDACTED]@gov.scot>
To: sghhc@parliament.scot
Cc: Deputy First Minister and Cabinet Secretary for Education and Skills
<dfmcse@gov.scot>
Date: Mon, 03 Aug 2020 12:32:51 +0000
Attachments: 030820 DFM to Linda Fabiani 2 .pdf (354.86 kB)

Good afternoon

Please find attached a letter from the Deputy First Minister and Cabinet Secretary for Education and Skills.

Kind regards

[REDACTED]

[REDACTED] | Deputy Private Secretary to John Swinney MSP | Deputy First Minister of Scotland and Cabinet Secretary for Education & Skills | Scottish Government | St Andrew's House | Edinburgh | EH1 3DG | [REDACTED] | E: DFMCSE@gov.scot

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F/T: [REDACTED]
E: dfmcse@gov.scot

Linda Fabiani MSP
Convener – Committee on the Scottish
Government Handling of Harassment Complaints
c/o Clerk to the Committee
Room T1.03
The Scottish Parliament
Edinburgh
EH99 1SP

3 August 2020

Dear Linda

MINISTERIAL CODE: FIRST MINISTER'S SELF-REFERRAL

The Committee will wish to be aware that I am today answering a Parliamentary Question which will provide Parliament with an update on progress with the First Minister's decision to refer herself to the independent advisers on the Ministerial Code. This, of course, is an issue which forms part of the Committee's remit.

As you know, the referral was paused in early 2019 to avoid any risk of prejudice to the criminal proceedings. Responding to the current national health emergency has also had a significant impact on taking forward the referral. However, we are now in a position to proceed with the referral and I will today be publishing the remit for the referral and confirming that this will be taken forward by James Hamilton, one of the standing members of the panel of independent advisers.

I attach a copy of my PQ answer, which includes the remit. You may wish to draw this to the attention of the members of your Committee.

JOHN SWINNEY

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**Government Inspired Question and Answer
Monday, 3 August 2020**

Clare Adamson [S5W: 31054]:

to ask the Scottish Government for an update on progress with the First Minister's self-referral under the Scottish Ministerial Code which was announced on 13 January 2019.

John Swinney MSP:

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Background

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The First Minister has, accordingly, referred the matter for consideration by one or both Independent Advisers for advice on which to base her judgement about any action required in accordance with the Code.

Remit

The remit for the referral is to:

1. Review any relevant documentation relating to the meetings and discussions listed above.
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6. The Independent Adviser is further invited to consider and offer views on whether the Ministerial Code might need revision to reflect the terms of the Procedure and the strict limitations it places on the involvement of the First Minister in cases which fall to be considered under the Procedure.

Timing

The Independent Adviser is invited to commence the investigation and submit a report as soon as possible.

Publication

The terms of this remit will be published.

The final report will be published. If required, the report will be redacted to remove the risk of any complainer being identified and otherwise to ensure compliance with the terms of the order made by the court in the criminal proceedings.

Payment

Appointment as an Independent Adviser does not attract payment. Reasonable travel and subsistence costs will be paid in line with normal Civil Service rules.

Secretariat

The Scottish Government will provide secretariat support as required.

SCOTTISH GOVERNMENT

Response from James Hamilton, Independent Adviser on the Scottish Ministerial Code

From: Hynd JS (James) </o=tse/ou=tseexchsite01/cn=recipients/cn=hyndj">
To: sghhc@parliament.scot
Date: Mon, 03 Aug 2020 21:07:29 +0000
Attachments: Mr Hamilton letter to Committee - August 2020 - Final.pdf (174.12 kB)

Dear [REDACTED]

As you know, the Convener wrote to James Hamilton, the independent adviser on the Scottish Ministerial Code on 7 July.

Mr Hamilton has asked that I pass on to you his response, as attached. For the avoidance of doubt, I am sending this on Mr Hamilton's behalf as the independent adviser and not on behalf of the Scottish Government.

We are planning to put in place a secretariat to support Mr Hamilton during the referral. Until that is in place I am happy to liaise with Mr Hamilton as required.

Kind regards

James
James Hynd
Head of Cabinet, Parliament and Governance Division
Room 4N:03
St Andrew's House
Edinburgh
[REDACTED]

James Hamilton
Independent Adviser on the Scottish Ministerial Code

c/o E: James.hynd@gov.scot

Linda Fabiani MSP
Convener – Committee on the Scottish
Government Handling of Harassment Complaints
c/o Clerk to the Committee
Room T1.03
The Scottish Parliament
Edinburgh
EH99 1SP

3 August 2020

Dear Ms Fabiani

Thank you for your letter of 7 July about the remit of your Committee and its relationship to the First Minister's self-referral under the Scottish Ministerial Code that I have been asked to consider.

I should say at the outset that I do, of course, wish to be as helpful as I can to the Committee. Equally, at this early stage in my consideration of these matters, I do need to make it very clear that I am in possession of very limited information that I could provide at the present time and as an independent adviser I have, of course, had no personal involvement with and therefore no direct evidence which I could give in relation to the issues raised in the referral.

You put a number of specific questions to me in your letter. Let me deal with each of those in turn.

Remit

You asked if the remit for the referral would be published. As you will be aware, the Deputy First Minister has now responded to a Parliamentary Question in which he set out the remit for the referral. This provides the basis on which I will now proceed.

Timescales

I am not at this point able to provide a specific timetable for conducting the referral, nor set a particular deadline by when I will provide my report. Much will depend on the number of people I will need to interview and their availability. In addition the current Covid-19 crisis may create a significant logistical difficulty for the process of conducting the referral.

However, I do fully understand the Parliamentary and public interest in this matter and I will expedite matters as far as I can, consistent with ensuring the integrity of the process.

Evidence

You asked if I will commit at this stage to publish the evidence I gather. I cannot at this point give that commitment. The nature of certain issues within the scope of the referral are such that care will be needed about the handling of any material that I gather during the course of the referral. My report will, of course, be published in the normal way and in line with what has been specified in the remit, and will make appropriate reference to any relevant evidence gathered.

Committee

I note the suggestion that I might be called to appear before the Committee. I will await your further thoughts on that. My own view is that until I have concluded the referral process I would be considerably constrained in what I was able to say to the Committee in any meaningful way.

Please let me know if there is anything further I can add at this stage to any of the points above.

Yours Sincerely

James Hamilton

Scottish Parliament Committee: Ministerial Code

From: Hynd JS (James) </o=tse/ou=tseexchsite01/cn=recipients/cn=hyndj">
To: Deputy First Minister and Cabinet Secretary for Education and Skills
<dfmcse@gov.scot>
Cc: DG Organisational Development & Operations <dgodo@gov.scot>, "Director
Communications, Ministerial Support & Facilities" <directorcmsf@gov.scot>, Hogg
KJ (Kenneth) <kenneth.hogg@gov.scot>, [REDACTED]
<[REDACTED]@gov.scot>, [REDACTED] <[REDACTED]@gov.scot>, [REDACTED]
<[REDACTED]@gov.scot>, McAllister C (Colin)
<colin.mcallister@gov.scot>
Date: Mon, 03 Aug 2020 20:53:30 +0000
Attachments: 20200707LettertoJamesHamiltonwrittenevidence.pdf (216.53 kB); Mr Hamilton letter
to Committee - August 2020 - Final.pdf (174.12 kB)

Deputy First Minister

As you know, the Committee wrote to the independent adviser, Mr Hamilton, seeking his views on aspects of the Ministerial Code referral and the work of the Committee – copy attached. The Committee requested a response by 4 August.

Mr Hamilton has asked that, on his behalf, I to pass to the Committee his response. I attach a copy of his letter for information only. I expect that this will be published by the Committee in due course.

James
James Hynd
Head of Cabinet, Parliament and Governance Division
Room 4N:03
St Andrew's House
Edinburgh
[REDACTED]



Committee on the Scottish Government Handling of Harassment Complaints

James Hamilton
Independent Panel Member

c/o Clerk to the Committee
Room T1.03
The Scottish Parliament
Edinburgh
EH99 1SP

BY EMAIL

SGHHC@parliament.scot

7 July 2020

Dear Mr Hamilton

I am writing to you in my capacity as Convener of the Scottish Parliament's Committee on Scottish Government Handling of Harassment Complaints. As you will be aware, the Committee was established with the following remit:

"To consider and report on the actions of the First Minister, Scottish Government officials and special advisers in dealing with complaints about Alex Salmond, former First Minister, considered under the Scottish Government's "Handling of harassment complaints involving current or former ministers"¹ and procedure and actions in relation to the Scottish Ministerial Code.²

The Committee is seeking information from you at this stage in your capacity as the member of the independent panel who is considering the First Minister's self-referral under the Ministerial Code. I should say at the outset that the Committee appreciates that your process is entirely separate from the Committee's inquiry. However the Committee wants to ensure evidence that you gather, and your findings, can be made available to the Committee to inform its scrutiny.

The Committee wishes to consider the terms of the self-referral. Media coverage at the time suggested that a remit for your work would be published following the self-referral. I appreciate you halted your deliberations while court proceedings progressed, but I would welcome confirmation that you intend to publish such a remit soon.

¹ [Policy on handling of harassment complaints involving current or former ministers](#)

² [Scottish Ministerial Code](#)

As you will be aware, the Committee is including in its inquiry a focus on matters similar to those you have been invited to deliberate upon. On that basis, the Committee would ask that you inform the Committee of the likely timescales for concluding your deliberations. The Committee is working on the assumption that your work will conclude at some point during its inquiry. There is no issue with a parliamentary inquiry and consideration of the self-referral progressing concurrently.

The Committee appreciates that previous reports from the independent panel have been published in full, with evidence that has been gathered annexed to the report. The Committee asks that you confirm, at this stage, the forms of evidence you intend to make public. The Committee considers, in the interests of transparency and to enable it to undertake informed scrutiny, the evidence that you base your findings upon should be placed in the public domain as far as is possible.

The Committee intends to commence evidence taking in mid-August so a response from you on these matters is requested by 4 August. The Clerks will inform you at the earliest opportunity whether you will be called to give oral evidence.

Please note that the Committee has agreed that it will administer an oath/solemn affirmation for witnesses as a matter of course but that it will review this position in the case of any vulnerable witnesses.

Should you have any questions about this request or the handling of your response, please do not hesitate to contact the Clerks to the Committee.

Yours sincerely

Linda Fabiani MSP

Convener, Committee on the Scottish Government Handling of Harassment Complaints

Annexe A: Matters to take into account in preparing a response

Committee remit

The Committee was established with the following remit:

“To consider and report on the actions of the First Minister, Scottish Government officials and special advisers in dealing with complaints about Alex Salmond, former First Minister, considered under the Scottish Government’s “Handling of harassment complaints involving current or former ministers”³ and procedure and actions in relation to the Scottish Ministerial Code.⁴

All evidence submitted should fall within the terms of the remit of the Committee’s inquiry.

Please note this covers the period from 2008 -14 and up to the present and includes any information relevant to the Committee’s remit which you may have in your current and/or any former role or capacity.

Data processing statement

The Committee has agreed a statement which sets out how it will handle evidence received to this inquiry. Everyone submitting written evidence must abide by the terms of this statement so please give this careful consideration throughout the preparation of your response. Your response will also be reviewed by Parliament officials to ensure compliance with the statement. It is reproduced in Annexe B.

Details of records required by the Committee

As stated in the cover letter, the Committee is seeking copies of all records from you / your organisation, unless you know the Committee is being provided these records by another individual or organisation.

The detail the Committee is interested in is provided below. Please note this is not an exhaustive list and the same generic wording for records requested is being sent to all those being asked for written evidence.

- Correspondence - including letters, emails (official/formal/private/personal/party), text messages, WhatsApp messages, and all other electronic forms of correspondence), as well as handwritten notes, copies of handwritten notes, and handwritten notes that have been transcribed into official communications.

³ [Policy on handling of harassment complaints involving current of former ministers](#)

⁴ [Scottish Ministerial Code](#)

- Documentation - including any physical typed documents, as well as handwritten notes; copies of handwritten notes; handwritten notes that have been transcribed into official instructions; and electronic documents stored on any electronic files or otherwise recorded.

For the avoidance of doubt the above includes all correspondence and documents you may have initiated, received or been copied into.

- Meetings - Please also include details of any meetings or discussions held, including the date (if you cannot recall the exact date include an estimate), details of attendees and matters discussed; any meeting minutes or associated notes; any diary/calendar entries on the meeting including details included in the calendar reminder of the purpose of the meeting.
- Phone calls – Please also include any relevant call logs you hold or details of the estimated date of a relevant phone call, the other person or persons taking part in the call and the issues covered.

Wherever relevant please also detail, including in relation to all meetings and phone calls, who initiated any form of contact.

Other relevant matters

In addition to answering the questions that have been tailored to you, the Committee asks that you consider the terms of its inquiry remit carefully and the approach paper in Annexe C in preparing a response. If there are pieces of evidence you hold, or situations you recall, or observations you could make, that are relevant to the inquiry, you should also cover these in your submission.

Here the Committee considers the “reasonable person test” should apply and “any information you consider relevant” would include information which, should it come to light, would be considered, by a reasonable person, to be information which should be disclosed in whichever form it takes.

The Committee hopes to establish as much as possible from written evidence enabling only the necessary witnesses to be called for oral evidence. Should the Committee learn of evidence you could reasonably have offered at the start of the inquiry at a later stage from other witnesses, the Committee may call you to give evidence to explain. Please note that similar requests for all relevant evidence have been made to a number of key people in this inquiry.

Where relevant evidence exists but you are not in a position to provide it due to the terms of the Committee’s data handling statement in Annexe B, please stipulate, as far as is possible, the nature of the information being withheld, the associated date and the legal grounds for withholding this information including reference to the section of the relevant legislation. Wherever possible please

provide records and redact the sensitive material, and stipulate the grounds for doing so.

Other relevant individuals

In preparing your evidence, it is entirely understandable to consult others, for example where details of the dates of meetings require to be sourced by support staff in an organisation you are part of. However, for those being asked to respond on an individual basis, the Committee is seeking your personal account of events and on that basis there should be no discussions between you and others who are submitting evidence, that seek to verify or align each other's accounts. Where the Committee is seeking accounts from individuals it will not, as a rule, accept joint responses from two or more individuals.

Annexe B: Committee on Scottish Government Handling of Harassment Complaints written statement on handling of information and evidence

Introduction

1. The Committee on the Scottish Government Handling of Harassment Complaints (the “Committee”) was established with the following remit for its inquiry:

To consider and report on the actions of the First Minister, Scottish Government officials and special advisers in dealing with complaints about Alex Salmond, former First Minister, considered under the Scottish Government’s “Handling of harassment complaints involving current or former ministers”⁵ and procedure and actions in relation to the Scottish Ministerial Code.

2. In fulfilling its remit, the Committee’s approach will be as follows:

- * establish where issues arose in the handling of the complaints and the actions in relation to the Scottish Ministerial Code;
- * consider what actions were taken that gave rise to these issues;
- * consider whether the policies are sufficient and fit for purpose or whether it was the application of the processes which gave rise to these issues;
- * consider whether robust governance of policy evaluation and decision-making is in place; and
- * consider whether any lessons could be learned to avoid the issues arising again.

3. Given the content of its remit and the sensitive issues it anticipates exploring, the Committee wishes to set out publicly its approach to the handling and processing of data it receives in the course of its inquiry.

General Considerations

4. For the avoidance of doubt, the Committee wishes to set out the general parameters which apply to the discharge of its remit and the conduct of all participants in its proceedings.
5. The Committee and all participants must comply with the court order made by the Lord Justice Clerk, Lady Dorrian, on 10 March 2020 preventing publication of the names and identity and any information likely to disclose

⁵ [Policy on handling of harassment complaints involving current or former ministers](#)

the identity of the complainers in the case of HMA v Alexander Elliot Anderson Salmond⁶.

6. The Committee will comply with its obligations under GDPR and the ECHR. Only material that is relevant to the inquiry will be published.
7. The Code of Conduct for Committee⁷ members also regulates the handling of confidential material.
8. The Committee will not revisit the criminal trial nor reinvestigate the substance of the complaints originally made to the Scottish Government.
9. The Committee acknowledges that anyone who made or will make a complaint under the Scottish Government's procedure for handling harassment complaints should expect the procedure to be conducted in a manner that protects confidentiality and does not inhibit complainers from coming forward. In undertaking its inquiry, the Committee will seek to support and not to compromise those principles.

Specific considerations and actions

10. Working within these parameters, the Committee can confirm that the following will be taken into account when processing personal data:
 - Parliamentary committees generally publish all written evidence unless there are legal or other reasons (such as volume or relevance) not to do so. The Committee will take a similar open and transparent approach to other parliamentary committees.
 - However, there are some additional considerations the Committee will make when handling written evidence. The Committee will redact personal or other identifying information in material it publishes where it considers it necessary to do so to comply with the Court Order (particularly in relation to jigsaw identification⁸) and data protection requirements.
 - The Committee will publish documents as packages, after making necessary redactions, rather than individually as they are received, to avoid accidentally increasing the risk of jigsaw identification.
 - Identifying information about individuals below SCS senior civil service grades (including Special Advisers) will not be required from the Scottish Government unless the Committee has established and can show that

⁶ The order was made under section 11 of the Contempt of Court Act 1981 and has indefinite effect.

⁷ <https://www.parliament.scot/msps/code-of-conduct-for-msps.aspx>

⁸ Jigsaw identification means enabling others to identify a person by providing sufficient pieces of information about them without revealing the identity outright, including revealing missing puzzle pieces of information that disclose the identity in combination with other information already in the public domain.

there is a public interest to do so in an individual instance and if the inquiry's aim can only be achieved if the Committee obtains the identifying information.

- If the Committee seeks evidence directly from individuals, it will do so with due regard to data protection requirements including observing principles of fairness and human rights.
 - The Committee will consider what processing is necessary, proportionate and fair on a case by case basis, according to the individual circumstances of the data subject concerned.
 - The Committee will collect and retain only the minimum amount of personal data needed to fulfil its remit. The Committee is currently undertaking a full data protection impact assessment.
 - The Committee has put in place appropriate measures to keep any information it receives secure with strictly restricted access, under the supervision of the Scottish Parliament's DPO and Information Manager.
 - The Committee will ensure that all participants are aware that the complainers in the criminal trial should not be identified or discussed in public session. This includes the expectation that all witnesses will take their best endeavours to avoid jigsaw identification.
11. In line with the Parliament's Privacy Notice on submitting views to a committee, the Committee may, on occasion, accept written submissions in a non-standard format. Anyone submitting written evidence can request that their evidence be anonymised or that it should be treated as "confidential" (not for publication).
12. The decision on whether the written evidence will be accepted either anonymously or as "confidential" (not for publication) is for the Committee to take. Evidence accepted as "confidential" (not for publication) will not be published online or referenced in any Committee report and access will only be given to relevant SPCB staff and the Committee Members. The Committee will also make a separate assessment on whether publication is compatible with data protection duties.

**SGHHC Committee
June 2020**

Annexe C: Committee on Scottish Government Handling of Harassment Complaints approach to inquiry (last updated 1 July 2020)

Committee remit

1. The inquiry remit is:

“To consider and report on the actions of the First Minister, Scottish Government officials and special advisers in dealing with complaints about Alex Salmond, former First Minister, considered under the Scottish Government’s “Handling of harassment complaints involving current or former ministers⁹ and procedure and actions in relation to the Scottish Ministerial Code.”¹⁰

General approach to its inquiry

2. The Committee has agreed the following overall objectives in conducting its inquiry and what it wishes to achieve from this—

- establish where issues arose in the handling of the complaints and the actions in relation to the Scottish Ministerial Code
- consider what actions were taken that gave rise to these issues
- consider whether the policies are sufficient and fit for purpose or whether it was the application of the processes which gave rise to these issues
- consider whether robust governance of policy evaluation and decision-making is in place
- consider whether any lessons could be learned to avoid the issues arising again

3. The Committee agreed to break the inquiry down under three general headings. These are—

- the actions taken in relation to the policy on handling harassment complaints involving current and former ministers. This includes—
 - the development of the policy; and
 - the handling of the complaints
- the judicial review
- the actions taken in relation to the Scottish Ministerial Code

Written evidence from the Scottish Government

The Committee has requested extensive evidence being held by the Scottish Government. It is expected to be received over the course of July and processed by Parliament staff, in accordance with the handing of written evidence statement, for publication thereafter in as timely a manner as possible. If any evidence held is

⁹ [Policy on handling of harassment complaints involving current of former ministers](#)

¹⁰ [Scottish Ministerial Code](#)

not provided, the Committee has requested an explanation of why that is the case. More detail on what has been requested is below:

Policy development

- A written statement plus supporting documents in respect of the development of the Scottish Government's procedure for handling harassment complaints about current or former Ministers.

As well as information relevant to this part of the inquiry, the Scottish Government has been asked to address: how the policy was developed, including why the policy review was ordered in the first place and how this task was approached the steps taken during the development of the policy, and what testing was conducted to make sure the policy was robust before it was implemented; who was involved in the development process; how decisions were taken in the process and how the consultation was carried out and the implementation of the policy planned, resourced and communicated.

Judicial review

- A written statement plus supporting documents in respect of information about the judicial review.

In particular, the Committee has sought information on the roles and responsibilities in relation to its conduct of litigation generally and in this case in particular; the extent to which the Scottish Government kept emerging details and prospects of success under review; how the decision to settle was taken, including the timing of the decision; and what factors contributed to the cost of settlement.

Handling of complaints

- A written statement plus supporting documents in respect of how the Scottish Government handled the specific complaints under the harassment procedure.

In particular, the Scottish Government has been asked to address: what the process was in conducting the investigation; who conducted it; who took final decisions on the outcome of the investigation and when contact was made with Alex Salmond; and whether the findings were going to be published.

Seeking further written evidence from the Scottish Government

4. The Committee has also agreed to seek further evidence from the Scottish Government in relation to the final phase of the inquiry, the Ministerial Code and the application of the Code in relation to complaints handling. In general terms, the focus of this element of the inquiry will include: to give general consideration as to whether the code is fit for purpose: whether it is clear what course of action is required; whether there is too much discretion in its operation; and ultimately whether it protects integrity of public life. More specifically the Committee will explore who knew what and at what point, what was the nature of the meetings between the First Minister and Alex Salmond and how was the distinction drawn between Government and Party matters.

Order of oral evidence

5. The Committee intends to conduct the inquiry in a chronological way as far as is possible, and to identify themes to focus on for each evidence session. This will allow the Committee to consider the progress of events as they happened and as far as possible follow the flow of evidence in a logical way. The Committee also intends to ask all relevant witnesses about Scottish Government culture as an ongoing theme of its scrutiny.
6. The Committee has decided to seek to meet weekly from August. The Committee will commence evidence taking with a formal oral evidence session with the Permanent Secretary (and other relevant Scottish Government officials) to give evidence on the development of the complaints policy.
7. The Committee may decide to hear from the same witnesses more than once to ensure each phase of the inquiry covers all of the relevant information.

Written evidence

8. The Committee has agreed a list of witnesses to seek written evidence from at this initial stage with a view to inviting a selection of these individuals to give oral evidence. This is an initial list and this can be extended based on the evidence the Committee receives in writing and in person. These individuals are:
 - Current and former permanent secretaries
 - Staff trade unions
 - The First Minister
 - The Deputy First Minister
 - Alex Salmond
 - Former Chief of Staff to Alex Salmond, Geoff Aberdein
 - The First Minister's Chief of Staff
 - A number of senior civil servants
 - The Lord Advocate
 - The Chief Executive of the SNP

Handling of evidence

9. The Committee has agreed an approach to its handling of information and this has also been published on the Committee's [website](#). As with any parliamentary committee, the Committee has the ability to place witnesses under oath. The Committee has agreed that it will administer an oath/solemn affirmation for witnesses as a matter of course but that it will review this position in the case of any vulnerable witnesses.

James Hamilton
Independent Adviser on the Scottish Ministerial Code

c/o E: James.hynd@gov.scot

Linda Fabiani MSP
Convener – Committee on the Scottish
Government Handling of Harassment Complaints
c/o Clerk to the Committee
Room T1.03
The Scottish Parliament
Edinburgh
EH99 1SP

3 August 2020

Dear Ms Fabiani

Thank you for your letter of 7 July about the remit of your Committee and its relationship to the First Minister's self-referral under the Scottish Ministerial Code that I have been asked to consider.

I should say at the outset that I do, of course, wish to be as helpful as I can to the Committee. Equally, at this early stage in my consideration of these matters, I do need to make it very clear that I am in possession of very limited information that I could provide at the present time and as an independent adviser I have, of course, had no personal involvement with and therefore no direct evidence which I could give in relation to the issues raised in the referral.

You put a number of specific questions to me in your letter. Let me deal with each of those in turn.

Remit

You asked if the remit for the referral would be published. As you will be aware, the Deputy First Minister has now responded to a Parliamentary Question in which he set out the remit for the referral. This provides the basis on which I will now proceed.

Timescales

I am not at this point able to provide a specific timetable for conducting the referral, nor set a particular deadline by when I will provide my report. Much will depend on the number of people I will need to interview and their availability. In addition the current Covid-19 crisis may create a significant logistical difficulty for the process of conducting the referral.

However, I do fully understand the Parliamentary and public interest in this matter and I will expedite matters as far as I can, consistent with ensuring the integrity of the process.

Evidence

You asked if I will commit at this stage to publish the evidence I gather. I cannot at this point give that commitment. The nature of certain issues within the scope of the referral are such that care will be needed about the handling of any material that I gather during the course of the referral. My report will, of course, be published in the normal way and in line with what has been specified in the remit, and will make appropriate reference to any relevant evidence gathered.

Committee

I note the suggestion that I might be called to appear before the Committee. I will await your further thoughts on that. My own view is that until I have concluded the referral process I would be considerably constrained in what I was able to say to the Committee in any meaningful way.

Please let me know if there is anything further I can add at this stage to any of the points above.

Yours Sincerely

James Hamilton

WRITTEN PQ Answers

From: s0678a@gov.scot
To: Hynd JS (James) <james.hynd@gov.scot>
Date: Mon, 03 Aug 2020 13:00:07 +0000
Attachments: s5w-31054.docx (16.91 kB); s5w-31054_backgroundnote.docx (20.8 kB)

Please find attached, the answers to the WRITTEN PQs processed on 03/08/2020:-

S5W-31054

SCOTTISH PARLIAMENT

WRITTEN ANSWER

3 August 2020

Index Heading: Constitution and External Affairs

Clare Adamson (Motherwell and Wishaw) (Scottish National Party): To ask the Scottish Government whether it will provide an update on progress with the First Minister's self-referral under the Scottish Ministerial Code, which was announced on 13 January 2019.

S5W-31054

John Swinney: In my response to S5W-21344 on 31 January 2019, I advised Parliament that the Ministerial Code referral had to be paused to avoid any risk of prejudice to live criminal proceedings. Since the conclusion of those proceedings, the attention of the Government has been focussed on leading Scotland's response global health emergency. In light of the progress that has been made we are now able to re-commence the referral.

The referral will be led by James Hamilton, who is a standing member of the panel of independent advisers. Mr Hamilton is a former Director of Public Prosecutions in Ireland and has been an independent adviser since January 2013.

Mr Hamilton will now proceed with the referral and report as soon as he is able. The report will be published in line with the terms of the remit.

The remit for the referral is as follows:

Ministerial Code Referral: Remit for Independent Adviser

Background

It has been alleged that the First Minister breached the Scottish Ministerial Code in that she failed to feed back the basic facts of meetings and discussions held with Alex Salmond to her private office as required by sections 4.22 and 4.23 of the Code. The meetings and discussions in question took place on:

- 29 March 2018 – Meeting between Ms Sturgeon and Geoff Aberdein, former Chief of Staff to Mr Salmond, Scottish Parliament
- 2 April 2018 - Meeting between Ms Sturgeon and Mr Salmond at Ms Sturgeon's home.
- 23 April 2018 - Telephone conversation between Ms Sturgeon and Mr Salmond.
- 7 June 2018 - Meeting between Ms Sturgeon and Mr Salmond at SNP Conference, Aberdeen.
- 14 July 2018 - Meeting between Ms Sturgeon and Mr Salmond at Ms Sturgeon's home.

- 18 July 2018 - Telephone conversation between Ms Sturgeon and Mr Salmond.

It has been further suggested that, in light of those meetings, the First Minister may have attempted to influence the conduct of the investigation then being undertaken by the Permanent Secretary into allegations made against Mr Salmond under the Procedure for Handling of Harassment Complaints involving Current or Former Ministers ("the Procedure").

Scottish Ministerial Code

The key relevant extracts from the Code are:

1.6. Ministers are personally responsible for deciding how to act and conduct themselves in the light of the Ministerial Code and for justifying their actions to Parliament and the public. The First Minister is, however, the ultimate judge of the standards of behaviour expected of a Minister and of the appropriate consequences of a breach of those standards. Although the First Minister will not expect to comment on every matter which could conceivably be brought to his or her attention, Ministers can only remain in office for so long as they retain the First Minister's confidence.

1.7. Where he or she deems it appropriate, the First Minister may refer matters to the independent advisers on the Ministerial Code to provide him or her with advice on which to base his or her judgement about any action required in respect of Ministerial conduct. The findings of the independent advisers will be published.

Contacts with External Individuals and Organisations, including Outside Interest Groups and Lobbyists

4.22 Ministers meet many people and organisations and consider a wide range of views as part of the formulation of Government policy. Meetings on official business should normally be arranged through Private Offices. A private secretary or official should be present for all discussions relating to Government business. Private Offices should arrange for the basic facts of formal meetings between Ministers and outside interest groups to be recorded, setting out the reasons for the meeting, the names of those attending and the interests represented. A monthly list of engagements carried out by all Ministers is published three months in arrears.

4.23 If Ministers meet external organisations or individuals and find themselves discussing official business without an official present – for example at a party conference, social occasion or on holiday – any significant content (such as substantive issues relating to Government decisions or contracts) should be passed back to their Private Offices as soon as possible after the event, who should arrange for the basic facts of such meetings to be recorded in accordance with paragraph 4.22 above.

The First Minister has, accordingly, referred the matter for consideration by one or both Independent Advisers for advice on which to base her judgement about any action required in accordance with the Code.

Remit

The remit for the referral is to:

1. Review any relevant documentation relating to the meetings and discussions listed above.
2. Interview any Minister or official of the Scottish Government, including Special Advisers, who may have any knowledge of the facts and content of the meetings and discussions, to assess whether the Ministerial Code is engaged and, if so, whether the terms of the Code have been complied with.
3. Interview any relevant person outwith the Scottish Government, including the former First Minister, Alex Salmond, who may have information relating to the facts and content of the meetings and discussions.
4. Determine if there is any evidence that the First Minister attempted to use information discussed during those meetings and discussions to influence the conduct of the investigation being undertaken by the Permanent Secretary into allegations made against Mr Salmond under the Procedure.
5. Provide the Deputy First Minister with a report setting out the findings and conclusions with regard to:
 - i. whether the Ministerial Code is engaged regarding the meetings and discussions;
 - ii. whether there has been any breach of the Code and the nature of any such breach; and
 - iii. if a breach has occurred, advice on the appropriate remedy or sanction.
6. The Independent Adviser is further invited to consider and offer views on whether the Ministerial Code might need revision to reflect the terms of the Procedure and the strict limitations it places on the involvement of the First Minister in cases which fall to be considered under the Procedure.

Timing

The Independent Adviser is invited to commence the investigation and submit a report as soon as possible.

Publication

The terms of this remit will be published.

The final report will be published. If required, the report will be redacted to remove the risk of any complainer being identified and otherwise to ensure compliance with the terms of the order made by the court in the criminal proceedings.

Payment

Appointment as an Independent Adviser does not attract payment. Reasonable travel and subsistence costs will be paid in line with normal Civil Service rules.

Secretariat

The Scottish Government will provide secretariat support as required.

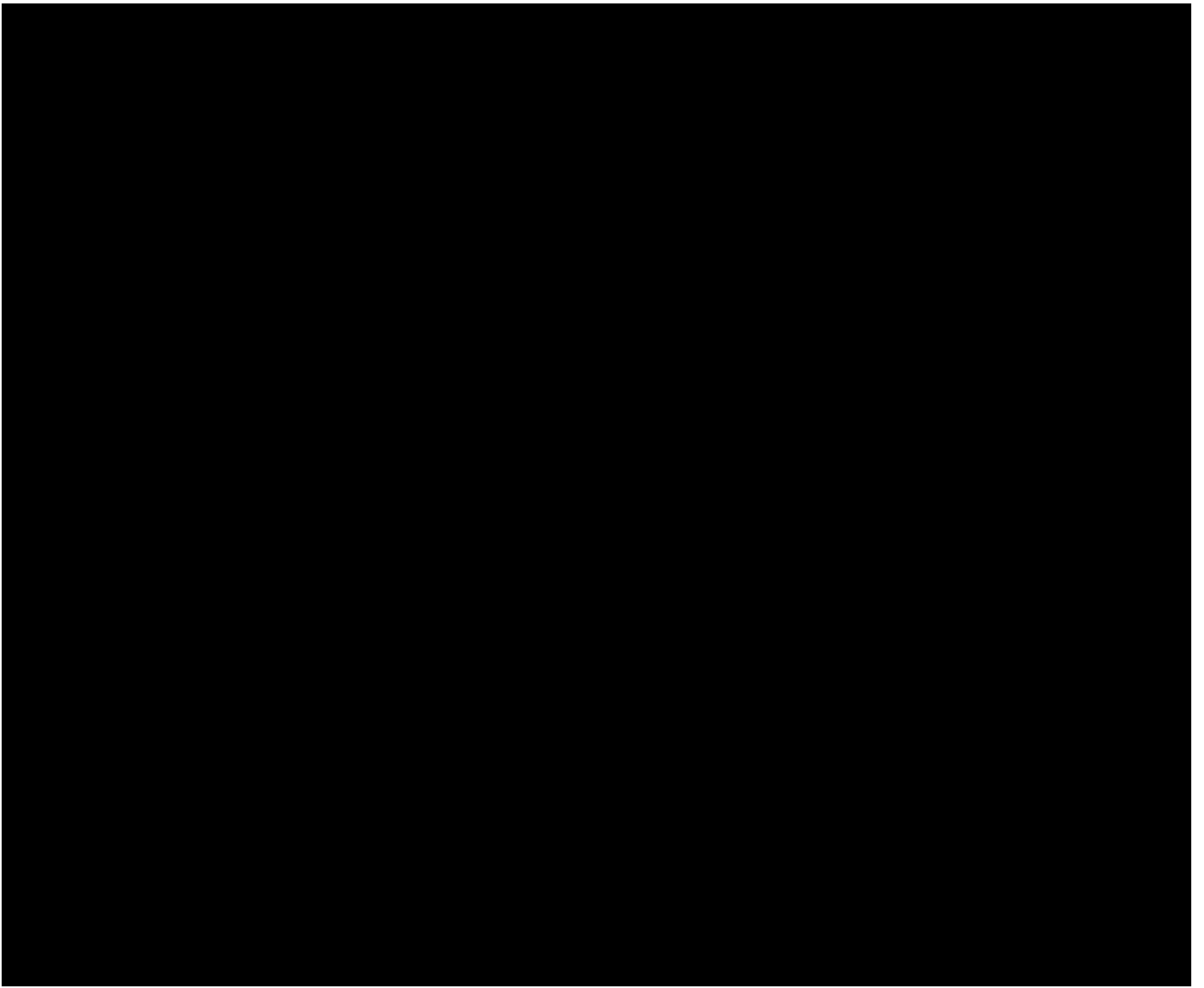
BACKGROUND NOTE FOR S5W-31054

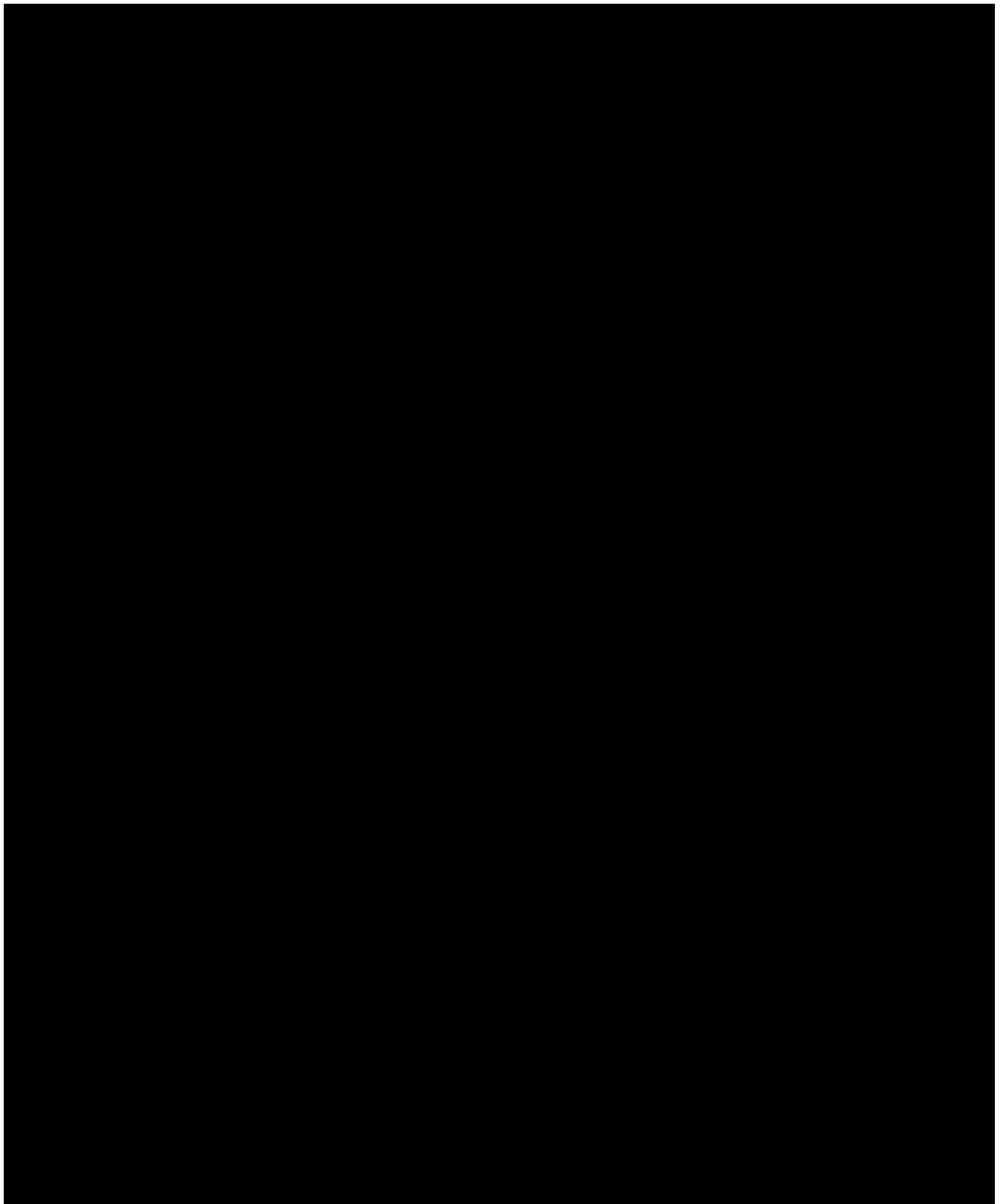
(To be completed as necessary with any additional information)

Text of Answer previously approved by Deputy First Minister.

Contact Name: James Hynd

Ext: [REDACTED]



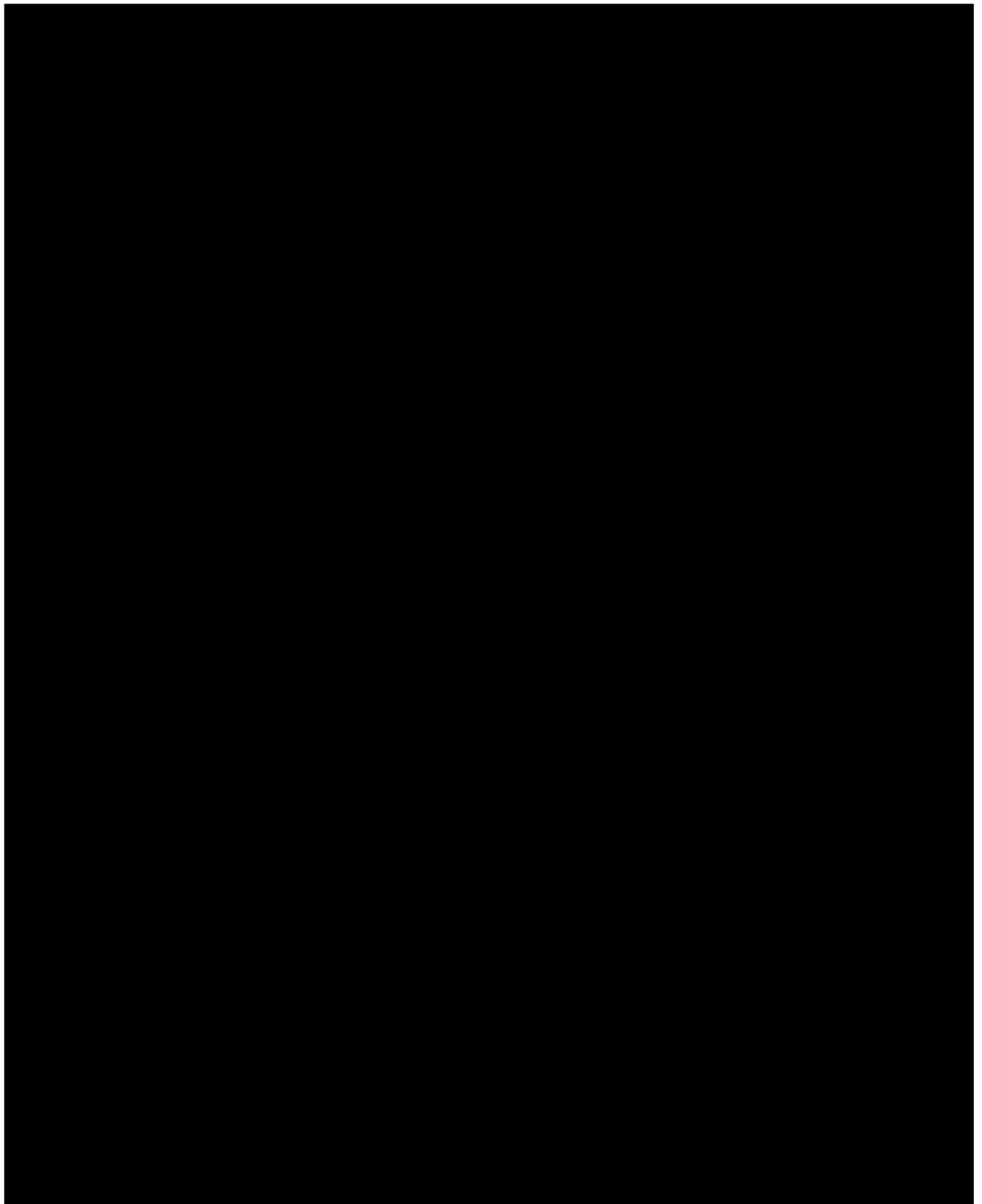


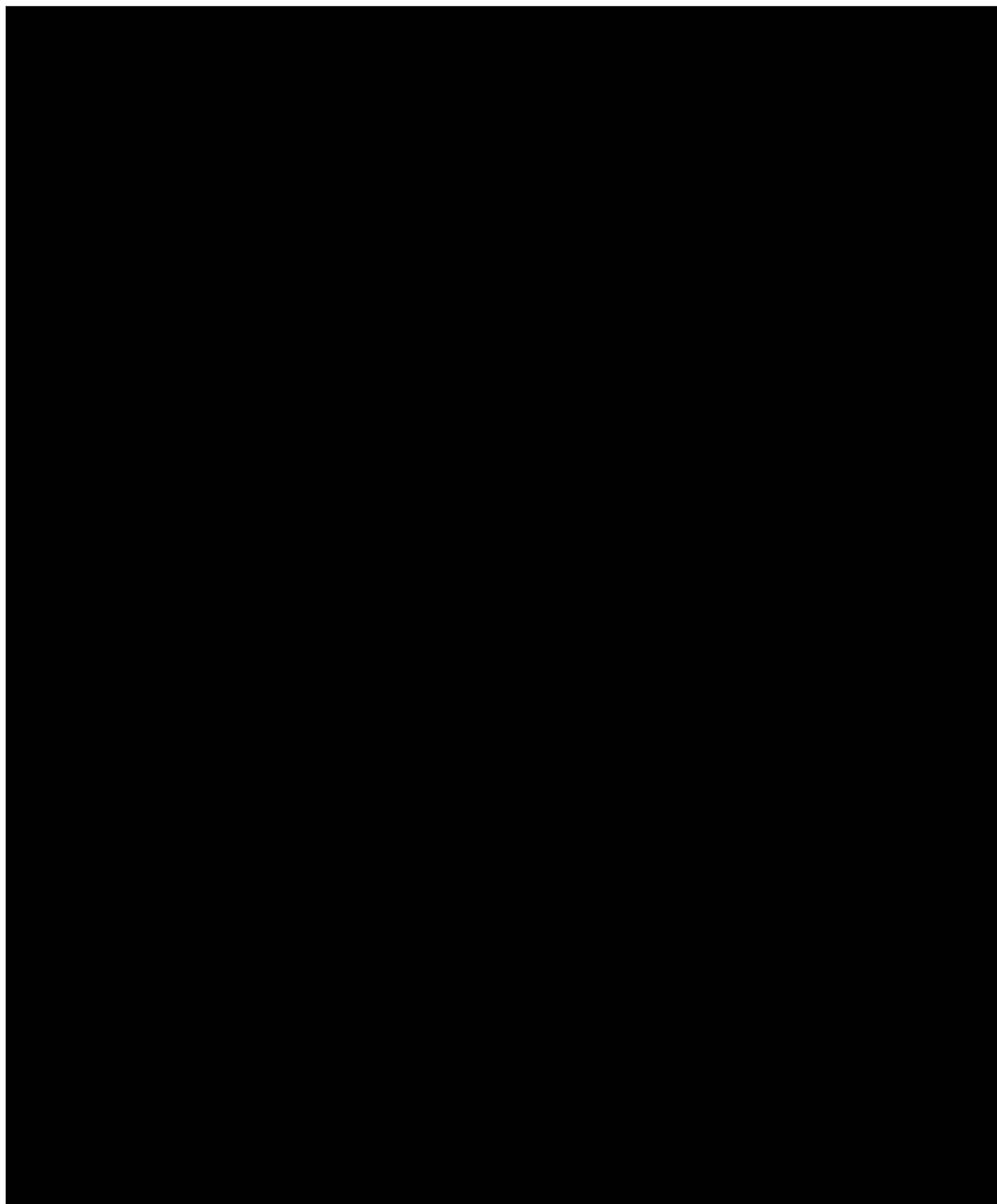
The first part of the paper discusses the importance of the research and the objectives of the study. It then presents a literature review of the existing research on the topic. The next section describes the methodology used in the study, including the data collection and analysis techniques. The results of the study are then presented, followed by a discussion of the findings and their implications. Finally, the paper concludes with a summary of the main points and suggestions for future research.

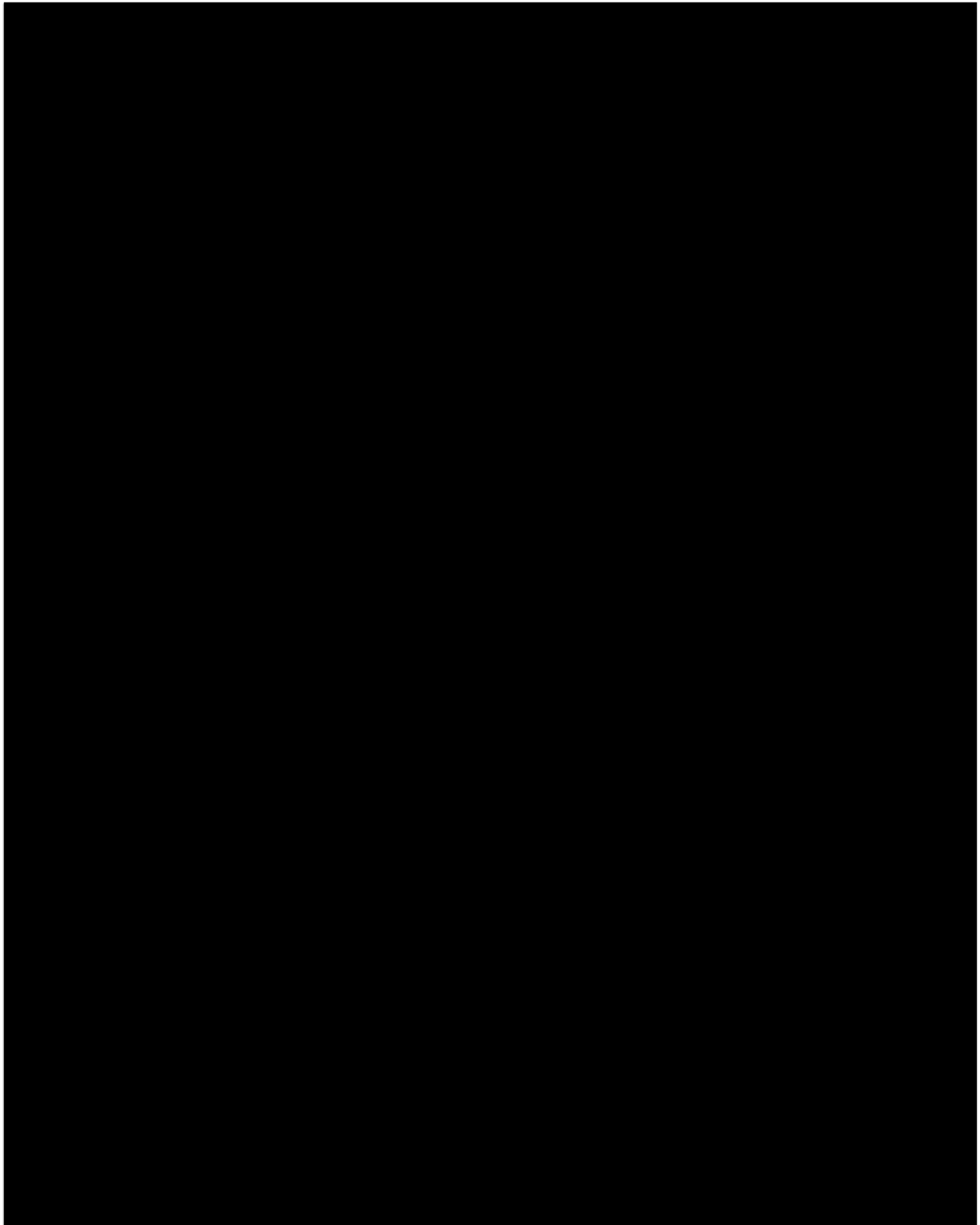
The research was conducted using a quantitative approach, with data collected from a survey of 100 participants. The survey was designed to measure the levels of self-esteem and self-efficacy among the participants. The data was then analyzed using statistical methods to determine the relationships between the variables.

The findings of the study indicate that there is a positive correlation between self-esteem and self-efficacy. This suggests that individuals with higher self-esteem are more likely to have higher self-efficacy. The results also show that self-esteem and self-efficacy are both important factors in predicting success in various tasks.

The implications of the study are that self-esteem and self-efficacy should be considered as key factors in the development of interventions aimed at improving performance. Further research is needed to explore the underlying mechanisms of these relationships and to develop more effective strategies for enhancing self-esteem and self-efficacy.







From: [REDACTED]
Sent: 08 December 2020 09:43
To: Geoff Aberdein [REDACTED]
Subject: RE: Scottish Ministerial Code

Dear Geoff,

Thank you for your email.

Mr Hamilton has great sympathy with the points you have made, and wants to reassure you that he will bear these in mind when preparing his report. If it proves possible to write a credible report without identifying people who are not public figures Mr Hamilton would very much wish to do so.

However, Mr Hamilton cannot give any firm undertakings in advance about the information that would be included in the report. Until all the information has been gathered and assessed it is challenging to anticipate what evidence will turn out to be significant or what issues will be necessary to decide in order to draw firm conclusions. If a report is to be credible it has to set out very clearly the basis for its author's conclusions.

I hope this response is helpful.

Best wishes,

[REDACTED]

From: Geoff Aberdein [REDACTED]
Sent: 26 November 2020 12:50
To: [REDACTED]
Subject: Re: Scottish Ministerial Code

[REDACTED]

Apologies for the length of time it has taken me to respond.

My intention in sending the full submission was to provide helpful and broader context for Mr Hamilton and to assist his enquiries as best as I could.

My preference would be for the information held within simply to be referred to and not included in any report. However, if Mr Hamilton intends to include any of the information I have provided, I would appreciate an explanation why as well as the courtesy of being informed which specific material is intended for use and when it will be published.

I am a private citizen simply doing my civic duty and this whole situation, despite the fact I have done nothing wrong, has caused me significant personal and professional difficulty. I

would appreciate Mr Hamilton's view as to whether my name has to be mentioned at all in any report?

Finally, I note in your email you confirm it is for Mr Hamilton to ensure that the report is consistent with the relevant court orders. As you will appreciate, I'm not a legal professional and cannot offer guidance in this regard.

Best wishes

Geoff

Sent from my iPad

On 10 Nov 2020, at 12:30, [REDACTED] wrote:

Dear Geoff,

Thank you for your email. Further to my previous email, I can confirm that Mr Hamilton has received your submission.

Mr Hamilton has sought information from witnesses for the purposes of fulfilling his task of reporting on the questions referred to him by the First Minister.

He will therefore be preparing a report for publication, and relevant information included in submissions will be included in or referred to in that report as appropriate. Mr Hamilton will also seek to ensure that the report is consistent with the relevant court orders on these matters.

If you are in a position to identify any particular material which you consider ought to be kept confidential it would be helpful for you to do so.

Please let me know if you need any more information.

Best wishes,

[REDACTED]

[REDACTED] | Please
contact me on Skype or on [REDACTED]

From: [REDACTED]

Sent: 30 October 2020 09:01

To: 'Geoff Aberdein' [REDACTED]

Subject: RE: Scottish Ministerial Code

Dear Geoff,

I am emailing to confirm that this email has been received. In terms of your question about how the submission will be used, Mr Hamilton will prepare a more detailed response setting out how he will use the written submissions in the preparation of his report, and I will send that over in due course.

Best wishes,

[REDACTED]

From: Geoff Aberdein [REDACTED]
Sent: 28 October 2020 10:30
To: [REDACTED]
Subject: Re: Scottish Ministerial Code

[REDACTED]

Please find attached my submission to the Committee on the Scottish Government's Handling of Harassment Complaints.

I believe the content of this submission sufficiently answers the questions posed to me by Mr Hamilton in his letter of 8 September. However, if Mr Hamilton requires further information, please invite him to write to me and I will endeavour to assist if I can.

I would appreciate confirmation of receipt of this email as well as confirmation that the content of this submission will not be circulated further and used only for the purposes of assisting Mr Hamilton with his enquires under the auspices of the First Minister's self-referral under the Scottish Ministerial Code.

Yours sincerely

Geoff Aberdein

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From: Hynd JS (James) <James.Hynd@gov.scot>

Sent: 17 August 2020 07:33

To: [REDACTED]

Subject: Ministerial Code

Morning [REDACTED]

Many thanks for agreeing to take on the secretariat role for the referral.

I attach the relevant background material that I have sent James Hamilton. This includes the remit for the referral.

Once you have had a chance to consider we can speak again.

The immediate actions are:

1. Mr Hamilton wants to write to the key people to invite their views – I will aim to progress those letters today.
2. Mr Hamilton has queried the fact that in the final attachment, which is material we have sent to the Committee, we have redacted some information on the grounds of legal professional privilege. He is seeking sight of that material. I suspect this will require a note to the LA.
3. Mr Hamilton wants to have access to a legal adviser in Scotland. We are seeking to use the SGLD outsourcing contract, although Ruairaidh was initially resistant on the grounds that Mr Hamilton is independent of the SG.
4. Mr Hamilton has asked if we can obtain for him a copy of the verbatim transcript of Geoff Aberdein's evidence in the court case when the meeting between him and FM on 29 March was discussed.

There is a eRDM file into which I have been putting the relevant papers. I will ask [REDACTED] to give you access.

Happy reading.

James

James Hynd
Head of Cabinet, Parliament and Governance Division
Room 4N:03
St Andrew's House
Edinburgh
Internal ext [REDACTED]
[REDACTED]

From: Hynd JS (James) <James.Hynd@gov.scot>

Sent: 04 August 2020 23:42

To: James Hamilton [REDACTED]

Subject: Background material

Dear Mr Hamilton

I have prepared for you the attached note that includes links what I think are the key documents that frame the referral.

These are:

1. The current version of the Scottish Ministerial Code
2. The Scottish Government procedure for considering harassment complaints against current or former Ministers. It was this procedure that was used to consider internal complaints against Mr Salmond.
- 3, 4, and 6. The First Minister's statement to the Scottish Parliament on 8 January 2019 when she disclosed the meetings with Mr Salmond, and also First Minister's Questions on 10 and 17 January when the matter was further discussed in Parliament.
- 5 and 7. The announcement on 13 January of the original self-referral and the decision to pause it on 31 January 2019.
8. Press coverage of a meeting between the First Minister and the former First Minister's former special adviser at which it is suggested issues relevant to the self-referral were discussed.
9. The published remit for the self-referral.

We are also searching for other internal documents that the Parliamentary Committee has asked for. I will provide you with copies of what is disclosed to the Committee.

I hope getting the material in this format is convenient for you. I can explore getting hard copies of this to you if that would be more convenient.

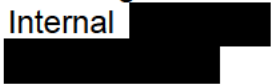
Obviously, I will be happy to track down any further material that you feel that you need.

Best wishes

James

James Hynd
Head of Cabinet, Parliament and Governance Division
Room 4N:03
St Andrew's House

Edinburgh
Internal



From: Hynd JS (James) <James.Hynd@gov.scot>
Sent: 06 August 2020 16:05
To: James Hamilton [REDACTED]
Subject: RE: Background material

Dear Mr Hamilton

I am sorry those links didn't work. Here are Word versions of both. I hope these come through ok.

Regards

James

James Hynd
Head of Cabinet, Parliament and Governance Division
Room 4N:03
St Andrew's House
Edinburgh
Internal [REDACTED]
[REDACTED]

From: James Hamilton
Sent: 06 August 2020 14:53
To: Hynd JS (James)
Subject: Re: Background material

Dear Mr Hynd

Thank you for this material which I have printed down except for items 7 and 9 which redirected me to another address. I am not sure how to find these two. Maybe if someone can print and scan them they could be sent to me attachments.

Best wishes

James

On Tue, 4 Aug 2020 at 23:42, <James.Hynd@gov.scot> wrote:
Dear Mr Hamilton

I have prepared for you the attached note that includes links what I think are the key documents that frame the referral.

These are:

1. The current version of the Scottish Ministerial Code

2. The Scottish Government procedure for considering harassment complaints against current or former Ministers. It was this procedure that was used to consider internal complaints against Mr Salmond.

3, 4, and 6. The First Minister's statement to the Scottish Parliament on 8 January 2019 when she disclosed the meetings with Mr Salmond, and also First Minister's Questions on 10 and 17 January when the matter was further discussed in Parliament.

5 and 7. The announcement on 13 January of the original self-referral and the decision to pause it on 31 January 2019.

8. Press coverage of a meeting between the First Minister and the former First Minister's former special adviser at which it is suggested issues relevant to the self-referral were discussed.

9. The published remit for the self-referral.

We are also searching for other internal documents that the Parliamentary Committee has asked for. I will provide you with copies of what is disclosed to the Committee.

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Obviously, I will be happy to track down any further material that you feel that you need.

Best wishes

James
James Hynd
Head of Cabinet, Parliament and Governance Division
Room 4N:03
St Andrew's House
Edinburgh
Internal [REDACTED]
[REDACTED]

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Question S5W-31054: Clare Adamson, Motherwell and Wishaw, Scottish National Party, Date Lodged: 03/08/2020

To ask the Scottish Government whether it will provide an update on progress with the First Minister's self-referral under the Scottish Ministerial Code, which was announced on 13 January 2019.

Answered by John Swinney (03/08/2020):

In my response to S5W-21344 on 31 January 2019, I advised Parliament that the Ministerial Code referral had to be paused to avoid any risk of prejudice to live criminal proceedings. Since the conclusion of those proceedings, the attention of the Government has been focussed on leading Scotland's response global health emergency. In light of the progress that has been made we are now able to re-commence the referral.

The referral will be led by James Hamilton, who is a standing member of the panel of independent advisers. Mr Hamilton is a former Director of Public Prosecutions in Ireland and has been an independent adviser since January 2013.

Mr Hamilton will now proceed with the referral and report as soon as he is able. The report will be published in line with the terms of the remit.

The remit for the referral is as follows:

Ministerial Code Referral: Remit for Independent Adviser

Background

It has been alleged that the First Minister breached the Scottish Ministerial Code in that she failed to feed back the basic facts of meetings and discussions held with Alex Salmond to her private office as required by sections 4.22 and 4.23 of the Code. The meetings and discussions in question took place on:

- 29 March 2018 – Meeting between Ms Sturgeon and Geoff Aberdein, former Chief of Staff to Mr Salmond, Scottish Parliament
- 2 April 2018 - Meeting between Ms Sturgeon and Mr Salmond at Ms Sturgeon's home.
- 23 April 2018 - Telephone conversation between Ms Sturgeon and Mr Salmond.
- 7 June 2018 - Meeting between Ms Sturgeon and Mr Salmond at SNP Conference, Aberdeen.
- 14 July 2018 - Meeting between Ms Sturgeon and Mr Salmond at Ms Sturgeon's home.
- 18 July 2018 - Telephone conversation between Ms Sturgeon and Mr Salmond.

It has been further suggested that, in light of those meetings, the First Minister may have attempted to influence the conduct of the investigation then being undertaken by the Permanent Secretary into allegations made against Mr Salmond under the Procedure for Handling of Harassment Complaints involving Current or Former Ministers ("the Procedure").

Scottish Ministerial Code

The key relevant extracts from the Code are:

1.6. Ministers are personally responsible for deciding how to act and conduct themselves in the light of the Ministerial Code and for justifying their actions to Parliament and the public. The First Minister is, however, the ultimate judge of the standards of behaviour expected of a Minister and of the appropriate consequences of a breach of those standards. Although the First Minister will not expect to comment on every matter which could conceivably be brought to his or her attention, Ministers can only remain in office for so long as they retain the First Minister's confidence.

1.7. Where he or she deems it appropriate, the First Minister may refer matters to the independent advisers on the Ministerial Code to provide him or her with advice on which to base his or her judgement about any action required in respect of Ministerial conduct. The findings of the independent advisers will be published.

Contacts with External Individuals and Organisations, including Outside Interest Groups and Lobbyists

4.22 Ministers meet many people and organisations and consider a wide range of views as part of the formulation of Government policy. Meetings on official business should normally be arranged through Private Offices. A private secretary or official should be present for all discussions relating to Government business. Private Offices should arrange for the basic facts of formal meetings between Ministers and outside interest groups to be recorded, setting out the reasons for the meeting, the names of those attending and the interests represented. A monthly list of engagements carried out by all Ministers is published three months in arrears.

4.23 If Ministers meet external organisations or individuals and find themselves discussing official business without an official present – for example at a party conference, social occasion or on holiday – any significant content (such as substantive issues relating to Government decisions or contracts) should be passed back to their Private Offices as soon as possible after the event, who should arrange for the basic facts of such meetings to be recorded in accordance with paragraph 4.22 above.

The First Minister has, accordingly, referred the matter for consideration by one or both Independent Advisers for advice on which to base her judgement about any action required in accordance with the Code.

Remit

The remit for the referral is to:

1. Review any relevant documentation relating to the meetings and discussions listed above.
2. Interview any Minister or official of the Scottish Government, including Special Advisers, who may have any knowledge of the facts and content of the meetings and discussions, to assess whether the Ministerial Code is engaged and, if so, whether the terms of the Code have been complied with.
3. Interview any relevant person outwith the Scottish Government, including the former First Minister, Alex Salmond, who may have information relating to the facts and content of the meetings and discussions.
4. Determine if there is any evidence that the First Minister attempted to use information discussed during those meetings and discussions to influence the conduct of the investigation being undertaken by the Permanent Secretary into allegations made against Mr Salmond under the Procedure.
5. Provide the Deputy First Minister with a report setting out the findings and conclusions with regard to:
 - i. whether the Ministerial Code is engaged regarding the meetings and discussions;
 - ii. whether there has been any breach of the Code and the nature of any such breach; and
 - iii. if a breach has occurred, advice on the appropriate remedy or sanction.
6. The Independent Adviser is further invited to consider and offer views on whether the Ministerial Code might need revision to reflect the terms of the Procedure and the strict limitations it places on the involvement of the First Minister in cases which fall to be considered under the Procedure.

Timing

The Independent Adviser is invited to commence the investigation and submit a report as soon as possible.

Publication

The terms of this remit will be published.

The final report will be published. If required, the report will be redacted to remove the risk of any complainer being identified and otherwise to ensure compliance with the terms of the order made by the court in the criminal proceedings.

Payment

Appointment as an Independent Adviser does not attract payment. Reasonable travel and subsistence costs will be paid in line with normal Civil Service rules.

Secretariat

The Scottish Government will provide secretariat support as required.

Current Status: Initiated by the Scottish Government. Answered by John Swinney on 03/08/2020

Question S5W-21344: Rona Mackay, Strathkelvin and Bearsden, Scottish National Party, Date Lodged: 31/01/2019

To ask the Scottish Government whether it will provide an update on the review of its procedure for handling complaints about Ministers or former Ministers, and on the First Minister's self-referral under the Ministerial Code.

Answered by John Swinney (31/01/2019):

The Scottish Government is committed to carrying out a review of the application of its procedure for handling complaints about Ministers or former Ministers. The review will be externally led and will examine the first application of the procedure to ensure that lessons are applied for any future complaints that are brought forward.

However, the Scottish Government does not wish to undertake any activity which may unintentionally prejudice live criminal proceedings, adversely impact the rights of anyone involved in the proceedings or affect the formal criminal process which is now under way. As a result, this review of its procedure for handling complaints about Ministers or former Ministers will not be progressed at this stage.

The First Minister's self-referral under the Ministerial Code has been discussed with James Hamilton, the Independent Adviser on the Code. Mr Hamilton has concluded that there is a potential risk of prejudice if the First Minister's self-referral under the Ministerial Code were to proceed at the present time. It has therefore been agreed that the inquiry under the Ministerial Code should also be deferred while criminal investigations are active.

Both the Scottish Government review and consideration under the Ministerial Code will recommence once criminal proceedings are no longer active and the risk of prejudice has been removed.

Current Status: Initiated by the Scottish Government. Answered by John Swinney on 31/01/2019

Briefing Pack for Mr Hamilton

1. Scottish Ministerial Code: February 2018 edition
<https://www.gov.scot/publications/scottish-ministerial-code-2018-edition/>
2. Scottish Government Procedure for handling harassment complaints involving current or former Ministers.
<https://www.gov.scot/publications/handling-of-harassment-complaints-involving-current-or-former-ministers/>
3. First Minister's Statement to Parliament - 8 January 2019
<http://www.parliament.scot/parliamentarybusiness/report.aspx?r=11871&i=107364>
4. First Minister's Questions – 10 January 2019
<http://www.parliament.scot/parliamentarybusiness/report.aspx?r=11875>
5. Press Release: First Minister's self-referral to Independent Advisers – 13 January 2019
<https://www.gov.scot/news/ministerial-code-referral-to-independent-advisers/>
6. First Minister's Questions – 17 January
<http://www.parliament.scot/parliamentarybusiness/report.aspx?r=11889&i=107507>
7. Deputy First Minister's Parliamentary Answer pausing referral: 31 January 2019
<https://www.parliament.scot/parliamentarybusiness/28877.aspx?SearchType=Advance&ReferenceNumbers=S5W-21344&DateTo=21/07/2020%2023:59:59&SortBy=DateSubmitted&Answers=All&SearchFor=All&ResultsPerPage=10>
8. Example of recent press coverage relating to meeting on 29 March 2019:
<https://news.sky.com/story/sturgeon-faces-new-questions-over-whether-she-misled-parliament-about-when-she-knew-of-salmond-complaints-12036962>
9. Parliamentary Answer setting out remit for self-referral – 3 August 2020
<https://www.parliament.scot/parliamentarybusiness/28877.aspx?SearchType=Advance&ReferenceNumbers=S5W-31054&ResultsPerPage=10>

From: Hynd JS (James) <James.Hynd@gov.scot>
Sent: 12 August 2020 09:11
To: James Hamilton [REDACTED]
Subject: RE: Background material

Good morning James

I promised you yesterday that I would send on some additional material that has just been released to the Committee. The expectation is that the Committee will publish this on their website in the coming days.

There are four documents:

1. A written statement the Committee asked for about the self-referral process that has led to your appointment.
2. A copy of the note from the First Minister to the Permanent Secretary advising her that there had been contact with Mr Salmond.
3. A copy of the Permanent Secretary's response.
4. A copy of a note from the Permanent Secretary to the First Minister advising about progress with the investigation. This document contains redactions for the purposes of protecting legal professional privilege.

I am hoping this file is not too large to send or receive. If so, I shall break into down into a number of emails.

James

James Hynd
Head of Cabinet, Parliament and Governance Division
Room 4N:03
St Andrew's House
Edinburgh
Internal [REDACTED]
[REDACTED]

From: James Hamilton
Sent: 10 August 2020 22:35
To: Hynd JS (James)
Subject: Re: Background material

No problem. About 12 noon would be good.

On Mon, 10 Aug 2020 at 22:14, wrote:
Hello

Sorry, I've only got to this now. Very happy to speak. Would you be free around mid-day or late afternoon tomorrow (Tuesday)?

James
James Hynd
Head of Cabinet, Parliament and Governance Division
Room 4N:03
St Andrew's House
Edinburgh
Internal [REDACTED]
[REDACTED]

From: James Hamilton [REDACTED]
Sent: 10 August 2020 15:54
To: Hynd JS (James)
Subject: Re: Background material

Dear James

It might be useful for us to have a brief discussion on the phone.

Best wishes

James

On Thu, 6 Aug 2020 at 19:38, James Hamilton [REDACTED] wrote:
Looks perfect, thanks!

On Thu 6 Aug 2020 at 16:04, <James.Hynd@gov.scot> wrote:
Dear Mr Hamilton

I am sorry those links didn't work. Here are Word versions of both. I hope these come through ok.

Regards

James
James Hynd
Head of Cabinet, Parliament and Governance Division
Room 4N:03
St Andrew's House
Edinburgh
Internal [REDACTED]
[REDACTED]

From: James Hamilton [REDACTED]
Sent: 06 August 2020 14:53
To: Hynd JS (James) <James.Hynd@gov.scot>
Subject: Re: Background material

Dear Mr Hynd

Thank you for this material which I have printed down except for items 7 and 9 which redirected me to another address. I am not sure how to find these two. Maybe if someone can print and scan them they could be sent to me attachments.

Best wishes

James

On Tue, 4 Aug 2020 at 23:42, <James.Hynd@gov.scot> wrote:
Dear Mr Hamilton

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These are:

1. The current version of the Scottish Ministerial Code
2. The Scottish Government procedure for considering harassment complaints against current or former Ministers. It was this procedure that was used to consider internal complaints against Mr Salmond.
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- 5 and 7. The announcement on 13 January of the original self-referral and the decision to pause it on 31 January 2019.
8. Press coverage of a meeting between the First Minister and the former First Minister's former special adviser at which it is suggested issues relevant to the self-referral were discussed.
9. The published remit for the self-referral.

We are also searching for other internal documents that the Parliamentary Committee has asked for. I will provide you with copies of what is disclosed to the Committee.

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Obviously, I will be happy to track down any further material that you feel that you need.

Best wishes

James
James Hynd
Head of Cabinet, Parliament and Governance Division
Room 4N:03
St Andrew's House
Edinburgh
Internal [REDACTED]
[REDACTED]

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Response to the Committee on the Scottish Government Handling of Harassment Complaints

Scottish Ministerial Code

Introduction

1. This statement is provided by the Scottish Government in response to a request from the Scottish Parliament's Committee on Scottish Government Handling of Harassment Complaints ('the Committee'). Specifically, in its letter of 30 June 2020¹ the Committee asked the Scottish Government to provide a written statement about the Scottish Ministerial Code and the events that led to the First Minister's self-referral under the Code.
2. The Committee also asked to receive the communications between the Permanent Secretary and the First Minister during the period of events which led to the First Minister's self-referral under the Code.
3. The information and documentation provided in this report relates to that held by the Scottish Government. The Scottish Government does not hold records of Party matters relating to any administration.
4. Since the First Minister's self-referral under the Ministerial Code the Scottish Government has not undertaken any investigations at its own hand into the matters about which she has referred herself, as these are properly for the independent adviser to take forward. The SG will cooperate fully with the independent adviser's investigations, as set out in the terms of the remit.

¹ <https://www.parliament.scot/HarassmentComplaintsCommittee/20200630ConvenertoPermSec.pdf>

5. The information and documentation provided in this report relates to that held by the Scottish Government. It is noted that the Committee intends to contact a range of other witnesses to seek written views and supporting evidence.

Scottish Ministerial Code

6. The first Scottish Ministerial Code ('the Code') was produced in 1999 following the establishment of the then Scottish Executive. The core principles set out in the Code have been adopted by successive Administrations since 1999. The Code was, and remains, largely modelled on the UK Ministerial Code.² This is also the case for the Welsh Government's Ministerial Code.³ The Ministerial Code relating to the Northern Ireland Executive⁴ reflects the particular constitutional settlement underpinning the establishment of the Executive. Neither the UK Ministerial Code nor the Scottish or Welsh Codes has a basis in statute.

7. By convention, the Scottish Ministerial Code is revised following the commencement of each new Parliamentary term. It may also be revised when a new First Minister comes into office, as was the case in February 2002, and June 2015 following the appointment of Rt Hon Nicola Sturgeon MSP as First Minister in November 2014. In addition, changes are sometimes made to reflect changes in the UK Ministerial Code (as was the case most recently in February 2018).

8. A list of Codes that have been published since 1999 is set out at Annex A. The current edition of the Scottish Ministerial Code was published in February 2018.⁵

² <https://www.gov.uk/government/publications/ministerial-code>

³ <https://gov.wales/sites/default/files/publications/2019-11/ministerial-code-november-2019.pdf>

⁴ <https://www.northernireland.gov.uk/sites/default/files/publications/nigov/Northern%20Ireland%20Ministerial%20Code.pdf>

⁵ Scottish Ministerial Code <https://www.gov.scot/publications/scottish-ministerial-code-2018-edition/>

Operation of the Code

9. The Code provides that *‘Scottish Ministers are expected to maintain high standards of behaviour and to behave in a way that upholds the highest standards of propriety’*.⁶

10. Under the terms of the Code, Ministers are personally responsible for deciding how to act and conduct themselves and for justifying their actions to Parliament and the public. The First Minister is, however, the ultimate judge of the standards of behaviour expected of a Minister and of the appropriate consequences of a breach of those standards. Ministers can only remain in office for so long as they retain the confidence of the First Minister.⁷

11. In addition to the Code, Ministers must also comply at all times with the requirements Parliament itself has laid down in relation to the accountability and responsibility of Ministers. All Ministers (both MSPs and Law Officers) are bound by the Interests of Members of the Scottish Parliament Act 2006, taken together with Section 39 of the Scotland Act 1998. All MSPs, including those who are Ministers, must also adhere to the terms of the Code of Conduct for Members of the Scottish Parliament, which provides a set of principles and standards for MSPs and sets out the ethical standards expected of them in carrying out their Parliamentary duties.⁸

Independent Advisers

12. Where the First Minister deems it appropriate, matters may be referred to a panel of independent advisers on the Ministerial Code to provide advice to the First Minister about any action required in respect of Ministerial conduct. The reports produced by the Independent Advisers are published.⁹

⁶ Scottish Ministerial Code, section 1.1

⁷ Ibid, section 1.6

⁸ Ibid, section 1.5

⁹ Ibid, section 1.7

13. Information about the current and former Independent Advisers and links to their previous reports are available on the Scottish Government website.¹⁰

Meetings between the First Minister and Mr Salmond

14. In her statement to the Parliament on 8 January 2019, *Procedure for Handling Complaints Involving Current or Former Ministers (Judicial Review Conclusion)*,¹¹ the First Minister provided Parliament with details of three meetings and two telephone conversations that she had with Mr Salmond during the course of 2018.

15. In responding to questions about her statement, and also at First Minister's Questions on 10 January 2019,¹² the First Minister said that the meetings with Mr Salmond were not Government meetings and that she had participated in her capacity as leader of her party.

Communications between First Minister and Permanent Secretary

16. As set out in her statement to Parliament referred to in paragraph 14, the First Minister took steps to advise the Permanent Secretary, Leslie Evans, about the fact of meeting Mr Salmond.

17. In its letter of 30 June, the Committee requested that the Scottish Government provide the communications between the Permanent Secretary and the First Minister during the period of events which led to the First Minister's self-referral under the Code.

18. The following documents are held by the Scottish Government and are provided to the Committee with this written statement:

- a note from First Minister to the Permanent Secretary of 6 June 2018;

¹⁰ <https://www.gov.scot/publications/ministerial-code-advisers/>

¹¹ <http://www.parliament.scot/parliamentarybusiness/report.aspx?r=11871>

¹² <http://www.parliament.scot/parliamentarybusiness/report.aspx?r=11875>

- a response from the Permanent Secretary to the First Minister of 7 June 2018; and
- a note from the Permanent Secretary to the First Minister 17 August 2018.

Self-Referral by First Minister

19. On 13 January 2019, the First Minister announced¹³ that she had referred herself to one or both of the Independent Advisers on the Ministerial Code in relation to the questions that had arisen about her contact with Mr Salmond during the Government's investigations into the complaints that had been made against him.

20. During the process of establishing the remit for the referral, Mr Salmond was charged with a series of criminal offences. In light of that development, and against the imperative of avoiding the risk of interfering with the criminal investigation and proceedings, the Deputy First Minister announced to Parliament by way of a written answer on 31 January 2019¹⁴ that the Independent Adviser who would be conducting the referral had concluded that there was a potential risk of prejudice if the self-referral were to be proceeded with at that time. The referral was therefore paused at that stage, with the intention that it would be resumed when the criminal investigation and proceedings were no longer active and the risk of prejudice no longer arose.

21. Since the conclusion of the criminal proceedings in March 2020, the resources and attention of the Scottish Government have been focused on responding to the COVID-19 national health emergency. Re-commencement of the

¹³ <https://www.gov.scot/news/ministerial-code-referral-to-independent-advisers/>

¹⁴ <https://www.parliament.scot/parliamentarybusiness/28877.aspx?SearchType=Advance&ReferenceNumbers=S5W-21344&DateTo=21/07/2020%2023:59:59&SortBy=DateSubmitted&Answers=All&SearchFor=All&ResultsPerPage=10>

self-referral is now being taken forward and the remit for the referral has now been agreed and published¹⁵, details of which have already been sent to the Committee¹⁶.

22. In the normal way, the report of the Independent Adviser will be published in due course.

SCOTTISH GOVERNMENT

10 August 2020

¹⁵<https://www.parliament.scot/parliamentarybusiness/28877.aspx?SearchType=Advance&ReferenceNumbers=S5W-31054&ResultsPerPage=10>

¹⁶https://www.parliament.scot/HarassmentComplaintsCommittee/030820_DFM_to_Linda_Fabiani_2_.pdf

Annex A

LIST OF CURRENT AND PREVIOUS EDITIONS OF THE SCOTTISH MINISTERIAL CODE

Eight editions of the Scottish Ministerial Code have been published since Devolution (with hyper-links, if available):

1. August 1999 (first edition) *(attached below as PDF document, as no longer on the Scottish Government's website – although it will be available from the National Records of Scotland):*



Scottish
Ministerial Code...

2. February 2002 - <https://www.webarchive.org.uk/wayback/archive/20141201094257/http://www.scotland.gov.uk/Resource/Doc/158641/0043036.pdf>
3. August 2003 - <https://www.webarchive.org.uk/wayback/archive/20141201051204/http://www.scotland.gov.uk/Publications/2003/08/17996/25268>
4. June 2008 - <https://www.webarchive.org.uk/wayback/archive/20141129004610/http://www.scotland.gov.uk/Publications/2009/06/18095600/0>
5. December 2011 - <https://www.webarchive.org.uk/wayback/archive/20160406181422/http://www.gov.scot/Publications/2011/12/01141452/0>
6. June 2015 - <https://www.webarchive.org.uk/wayback/archive/20170701074158/www.gov.scot/Publications/2015/06/2562>
7. August 2016 - <https://www.gov.scot/publications/scottish-ministerial-code-2016- edition/>
8. February 2018 - <https://www.gov.scot/publications/scottish-ministerial-code-2018- edition/>

Response from Permanent Secretary to FM

STRICTLY PRIVATE & CONFIDENTIAL

7 JUNE 2018

For the attention of the First Minister

I confirm receipt of your note of 6 June 2018, the terms of which I have noted.

LESLIE EVANS

Permanent Secretary

Letter from FM to Permanent Secretary

STRICTLY PRIVATE & CONFIDENTIAL

6 June 2018

For the attention of the Permanent Secretary

On Monday 2 April I was informed by Alex Salmond that you were investigating a complaint from within the civil service about his conduct while First Minister and that the complaint relates to alleged conduct of a sexual nature.

It was clear, from what he told me, that the complaint was being investigated under the guidance put in place towards the end of last year as part of the Scottish Government's response to the public discussion around sexual harassment cases, and which contained provisions for the handling of any complaints against former Ministers. I recalled and explained that as First Minister I had no role in this process, and that I would be advised of a complaint against a former Minister only when you have concluded your investigation.

The former First Minister (FFM) contacted me again on Monday 23 April to say that he intended to propose mediation.

I told the FFM on both occasions that it would not be appropriate for me to seek to intervene in the process in any way and I did not do so.

I should advise you that my Chief of Staff, Liz Lloyd was also made aware of the investigation in parallel with me and has had contact from the advisors to the FFM. She has also been clear that neither she nor I would intervene in the process.

After careful consideration, I decided not to inform you of these approaches as I did not want there to be any suggestion that I was seeking to intervene in the process.

However, I have now had a further approach from the FFM and, given its nature and that it represents a potential challenge to the process, I have decided that I should make you aware of it.

The FFM has told me that he considers the process being followed by the Scottish Government to be unlawful, that he has legal advice to the effect that he would be successful in an application for Judicial Review of the process, and that if any finding is made against him, it is his intention to lodge an application for Judicial Review to seek to have the process declared unlawful.

I want to be very clear that my purpose sending this note is not to ask you to cease the investigation or to influence its course in any way – it is to be transparent with you about my knowledge of a potential challenge to the process. You and I have discussed on many occasions the importance of a zero tolerance approach to sexual harassment within the Scottish Government and the importance to building confidence in such an approach of taking such complaints seriously and ensuring proper investigation. I am clear that the seniority, political affiliation or relationship to me or my government of any person subject to a complaint should have no bearing on how it's handled. To that end, you have my support in taking whatever steps you consider necessary and appropriate to investigate any complaint about inappropriate conduct within the Scottish Government.

It remains my view that it would be inappropriate for us to discuss the substance of the investigation prior to its conclusion.

I intend to inform the FFM that I have told you about his approach to me and to advise him again that it would not be appropriate for me to intervene in the process.

Finally, I am also mindful of the public interest considerations that arise when allegations of this nature are made. At this stage, however, it is my view that the interest of ensuring that the conduct of the investigation is fair to all parties and respects the confidentiality of the complainant(s) is the priority.

NICOLA STURGEON

Note from Permanent Secretary to FM

First Minister

Strictly private and confidential

Your note of 6 June informed me that the former First Minister, Alex Salmond had made you aware that an investigation was being conducted by the civil service into two formal complaints by civil servants about his conduct in office.

[Redacted]

[Redacted]

[Redacted]

In line with the Procedure, I will report the outcome of the investigation and decisions about the next steps to be taken by the Scottish Government to you once I have informed the complainers and former First Minister of my conclusions.

Leslie Evans

17 August 2018

From: James Hynd
Cabinet Secretariat
18 August 2020

[REDACTED]

Copy to: David Rogers

SCOTTISH MINISTERIAL CODE: FIRST MINISTER'S SELF REFERRAL

Purpose

1. The purpose of this note is to set out the terms under which you will provide head of secretariat support to James Hamilton, the Independent Adviser on the Ministerial Code, in respect of the current referral which he has been commissioned to undertake.

Timing

2. Your appointment to this role was agreed on [REDACTED]

Background

3. The Deputy First Minister set out the terms of the remit for the referral by way of an answer to a Parliamentary Question on 3 August. The full text of this is attached at annex A.

4. As set out below, there are a number of important aspects that you will need to ensure are in place for the proper conduct of the referral.

Independence

5. Mr Hamilton's role is independent of the SG. He is free to follow the evidence as he considers necessary in order to finalise his report. In supporting Mr Hamilton it is of the highest importance that you take all necessary steps to protect that independence.

Ministerial Oversight

6. The First Minister has delegated to the Deputy First Minister responsibility for overseeing this referral. When any matter arises that requires a Ministerial decision, you should refer that matter to DFM. No papers should be copied to the First Minister or her office, which, for these purposes, should extend to include the First Minister's Chief of Staff.

Timetable

7. No specific deadline has been set for the completion of the self-referral. You will wish to ensure that you provide as much support as Mr Hamilton requires to allow him to complete his report as soon as practicably possible.

Information Assurance and Data Protection

8. Requests by Mr Hamilton for information held by the Scottish Government, and which is not otherwise in the public domain, will need to be considered against the SG's legal duties and other considerations, for example, legal professional privilege, data protection and GDPR.

9. You should seek formal advice on these matters from OCT who will, as necessary, seek advice from, or direct you to, Lesley Fraser as SIRO.

Record Keeping and Fol

10. Information created in the course of the referral should be held securely on behalf of Mr Hamilton. You will wish to consider creating a restricted access folder in Objective, with permissions restricted to the smallest possible number of people. For the avoidance of doubt, I should not be given access to this folder or provided with papers unless there is a specific, and recorded, need to refer a matter to me.

11. It will be important to maintain a full record of the conduct of the referral.

12. You should seek advice from the Fol unit in respect of the application of Fol to information held by the Scottish Government on behalf of Mr Hamilton.

Legal Advice

13. As an independent adviser, SGLD may not be able to take instructions from Mr Hamilton, or you on his behalf. It may be necessary to secure external legal advice for Mr Hamilton, consistent with normal procurement rules.

Resourcing

14. Mr Hamilton's role is unpaid. He is entitled to reimbursement of reasonable costs on civil service terms and conditions. In light of the COVID-19 restrictions it is unlikely that Mr Hamilton will travel to Scotland, with all meetings/interviews held remotely.

15. In light of the de minimis costs expected to arise, and the short-term nature of the referral, no specific cost centres have been set up. Costs should be attributed to budget lines within the Cabinet and Constitution Directorate. You should consult the BCLO about these arrangements.

Support

16. Administrative support will be provided to you to assist you in this role. You should advise me if constraints on resourcing are interfering with the timely delivery of the remit.

Advice

17. If you require advice on any aspect of your role you should in the first instance seek advice, in writing, from David Rogers.

James Hynd
Cabinet Secretariat

18 August 2020

**SCOTTISH PARLIAMENT
WRITTEN ANSWER**

3 August 2020

Index Heading: Constitution and External Affairs

Clare Adamson (Motherwell and Wishaw) (Scottish National Party): To ask the Scottish Government whether it will provide an update on progress with the First Minister's self-referral under the Scottish Ministerial Code, which was announced on 13 January 2019.

S5W-31054

John Swinney: In my response to S5W-21344 on 31 January 2019, I advised Parliament that the Ministerial Code referral had to be paused to avoid any risk of prejudice to live criminal proceedings. Since the conclusion of those proceedings, the attention of the Government has been focussed on leading Scotland's response global health emergency. In light of the progress that has been made we are now able to re-commence the referral.

The referral will be led by James Hamilton, who is a standing member of the panel of independent advisers. Mr Hamilton is a former Director of Public Prosecutions in Ireland and has been an independent adviser since January 2013.

Mr Hamilton will now proceed with the referral and report as soon as he is able. The report will be published in line with the terms of the remit.

The remit for the referral is as follows:

Ministerial Code Referral: Remit for Independent Adviser

Background

It has been alleged that the First Minister breached the Scottish Ministerial Code in that she failed to feed back the basic facts of meetings and discussions held with Alex Salmond to her private office as required by sections 4.22 and 4.23 of the Code. The meetings and discussions in question took place on:

- 29 March 2018 – Meeting between Ms Sturgeon and Geoff Aberdein, former Chief of Staff to Mr Salmond, Scottish Parliament
- 2 April 2018 - Meeting between Ms Sturgeon and Mr Salmond at Ms Sturgeon's home.
- 23 April 2018 - Telephone conversation between Ms Sturgeon and Mr Salmond.
- 7 June 2018 - Meeting between Ms Sturgeon and Mr Salmond at SNP Conference, Aberdeen.
- 14 July 2018 - Meeting between Ms Sturgeon and Mr Salmond at Ms Sturgeon's home.
- 18 July 2018 - Telephone conversation between Ms Sturgeon and Mr Salmond.

It has been further suggested that, in light of those meetings, the First Minister may have attempted to influence the conduct of the investigation then being

undertaken by the Permanent Secretary into allegations made against Mr Salmond under the Procedure for Handling of Harassment Complaints involving Current or Former Ministers ("the Procedure").

Scottish Ministerial Code

The key relevant extracts from the Code are:

1.6. Ministers are personally responsible for deciding how to act and conduct themselves in the light of the Ministerial Code and for justifying their actions to Parliament and the public. The First Minister is, however, the ultimate judge of the standards of behaviour expected of a Minister and of the appropriate consequences of a breach of those standards. Although the First Minister will not expect to comment on every matter which could conceivably be brought to his or her attention, Ministers can only remain in office for so long as they retain the First Minister's confidence.

1.7. Where he or she deems it appropriate, the First Minister may refer matters to the independent advisers on the Ministerial Code to provide him or her with advice on which to base his or her judgement about any action required in respect of Ministerial conduct. The findings of the independent advisers will be published.

Contacts with External Individuals and Organisations, including Outside Interest Groups and Lobbyists

4.22 Ministers meet many people and organisations and consider a wide range of views as part of the formulation of Government policy. Meetings on official business should normally be arranged through Private Offices. A private secretary or official should be present for all discussions relating to Government business. Private Offices should arrange for the basic facts of formal meetings between Ministers and outside interest groups to be recorded, setting out the reasons for the meeting, the names of those attending and the interests represented. A monthly list of engagements carried out by all Ministers is published three months in arrears.

4.23 If Ministers meet external organisations or individuals and find themselves discussing official business without an official present – for example at a party conference, social occasion or on holiday – any significant content (such as substantive issues relating to Government decisions or contracts) should be passed back to their Private Offices as soon as possible after the event, who should arrange for the basic facts of such meetings to be recorded in accordance with paragraph 4.22 above.

The First Minister has, accordingly, referred the matter for consideration by one or both Independent Advisers for advice on which to base her judgement about any action required in accordance with the Code.

Remit

The remit for the referral is to:

1. Review any relevant documentation relating to the meetings and discussions listed above.
2. Interview any Minister or official of the Scottish Government, including Special Advisers, who may have any knowledge of the facts and content of the meetings and discussions, to assess whether the Ministerial Code is engaged and, if so, whether the terms of the Code have been complied with.
3. Interview any relevant person outwith the Scottish Government, including the former First Minister, Alex Salmond, who may have information relating to the facts and content of the meetings and discussions.
4. Determine if there is any evidence that the First Minister attempted to use information discussed during those meetings and discussions to influence the conduct of the investigation being undertaken by the Permanent Secretary into allegations made against Mr Salmond under the Procedure.
5. Provide the Deputy First Minister with a report setting out the findings and conclusions with regard to:
 - i. whether the Ministerial Code is engaged regarding the meetings and discussions;
 - ii. whether there has been any breach of the Code and the nature of any such breach; and
 - iii. if a breach has occurred, advice on the appropriate remedy or sanction.
6. The Independent Adviser is further invited to consider and offer views on whether the Ministerial Code might need revision to reflect the terms of the Procedure and the strict limitations it places on the involvement of the First Minister in cases which fall to be considered under the Procedure.

Timing

The Independent Adviser is invited to commence the investigation and submit a report as soon as possible.

Publication

The terms of this remit will be published.

The final report will be published. If required, the report will be redacted to remove the risk of any complainer being identified and otherwise to ensure compliance with the terms of the order made by the court in the criminal proceedings.

Payment

Appointment as an Independent Adviser does not attract payment. Reasonable travel and subsistence costs will be paid in line with normal Civil Service rules.

Secretariat

The Scottish Government will provide secretariat support as required.